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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2880

[Circular No. 2550]

Rights-of-Way Under the Mineral Leasing Act; Amendment Relating to Reimbursement of Costs

PART 2880—[AMENDED]

Under the authority of section 28 of the Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 et seq.), section 203 of the Trans-Alaska Pipeline Authorization Act (Pub. L. 95–153) and the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a), Part 2880, Group 2800, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

§ 2880.0–7 [Amended]

1. Section 2880.0–7(b) is amended by adding at the end thereof the sentence "Further, the permits, grants and other authorizations heretofore and hereafter issued by the Secretary or his delegate in connection with the Trans-Alaska Pipeline System are subject to § 2883.1–1 of this title.

2. Section 2883.1–1 is revised to read:

§ 2883.1–1 Reimbursement of costs.

(a) Reimbursement of costs for application processing and administration of right-of-way grants and temporary use permits, except applications and authorizations pertaining to the Trans-Alaska Pipeline System, shall be made in accordance with § 2803.1–1 of this title.

(b) Reimbursement of costs for application processing and administration of right-of-way grants and temporary use permits pertaining to the Trans-Alaska Pipeline System shall be made by payment of such sums as the Secretary determines to be required to reimburse the Department of the Interior for the actual costs of these services. In processing applications and administering right-of-way grants and temporary use permits relating to the Trans-Alaska Pipeline System, the Department of the Interior shall avoid unnecessary employment of personnel and needless expenditure of funds as determined by the Secretary. Reimbursement of costs shall be made for each quarter ending on the last day of March, June, September and December. On or before the 16th day after the close of each quarter, the authorized officer shall submit to the permittee a written statement of costs incurred during that quarter which are reimbursable.

Dated: July 12, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84–20437 Filed 8–2–84; 8:45 am]

Published in 49 F.R. 31208, August 3, 1984 - Effective August 3, 1984

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8370

[Circ. No. 2551]

Use Authorizations; Amendment of Subpart 8372—Special Recreation Permits, Other Than on Developed Recreation Sites

Under the authority of 43 U.S.C. 1201, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act (43 U.S.C. 1181a), the Act of September 15, 1960, as amended (16 U.S.C. 670g--n), the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460*l*–6a), and the National Trails System Act (16 U.S.C. 1241 *et seq.*), Subpart 8372, Part 8370, Group 8300, Subchapter H, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 8730—[AMENDED]

1. Part 8370 is amended by adding immediately after the heading the note:

Note.—The information collection requirements of 43 CFR Part 8370 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1004–0119. The information will be used to determine whether applicants for Special Recreation Permits on public lands should be granted such permits. The obligation to respond is required to obtain a benefit.

§ 8372.0–3 [Amended]

1. Section 8372.0–3 is amended by correcting the citation "16 U.S.C. 460(1–6a)" to read "16 U.S.C. 460*l*–6a."

§ 8372.0–5 [Amended]

2. Section 8372.0–5 is amended by:

a. Revising paragraph (b) to read as follows:

* * * * *

(b) "Actual expenses" are expenses necessarily incurred for the permitted activity or use. These include, but are not limited to, the actual costs of such items as expendable equipment and supplies. Actual expenses do not include any salaries, profit, increase of capital worth, allowances, or subsidies of any other activities of the permittee or sponsor, the purchase or amortization of nonexpendable supplies or equipment, any allowance for undersubscribed events or any monetary compensation for sponsors or participants."

* * * * *

b. Revising paragraph (e) to read as follows:

* * * * *

(e) "Educational use" is an academic activity sponsored by an accredited institution of learning.

* * * * *

3. Section 8372.0–7 is revised to read as follows:

§ 8372.0–7 Enforcement

(a) *Prohibited acts.* On all public lands and related waters, it is prohibited to: (1) Fail to obtain a permit and pay any fee required by this subpart; (2) violate stipulations or conditions of a permit issued under authority of this subpart; (3) participate knowingly in an event or use subject to the permit requirements of this subpart where no such permit has been issued; (4) fail to post a copy of any commercial or competitive permit where all participants have the opportunity to read it; and (5) fail to show a copy of the special recreation permit to a Bureau of Land Management employee or a participant upon request.

(b) *Penalties.* (1) Any person convicted of committing any prohibited act in this subpart, and violators of regulations or permit terms or stipulations, may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. (2) Authorized as well as unauthorized users may be subject to civil action for unauthorized use of the public lands or related waters and their resources, or violations of the permit terms or stipulations.

4. A new § 8372.1–3 is added to read as follows:

§ 8372.1–3 Exceptions.

(a) Special Recreation Permits are not required for uses that are sponsored or co-sponsored by the Bureau of Land Management.

(b) The authorized officer may determine that permits and fees are unnecessary where a use or event begins and ends on non-public lands or related waters, traverses less than 1 mile of public lands or 1 shoreline mile, and poses no threat of significant damage to public land or water resource values.

(c) The authorized officer may waive permit and fee requirements for competitive events that are not commercial when the events comply with off-road vehicle designations for the use area, no cash prizes are awarded, fewer than 50 vehicles including those of participants and spectators are involved, there is no public advertising for the event and there is no likelihood of significant damage to public land or water resource values or need for monitoring.

5. Section 8372.4 is amended by:

a. Revising paragraph (a) to read as follows:

§ 8372.4 [Amended]

(a) *Fees.* (1) Fees for Special Recreation Permits shall be established and maintained by the Director, Bureau of Land Management, and may be adjusted from time to time to reflect changes in costs. The fee schedule shall be incorporated in the Manual of the Bureau of Land Management, published periodically in the **Federal Register** and otherwise made generally available to the public.

(2) Actual costs to the United States shall be charged in lieu of the fees provided in the schedule when the estimated cost of issuing and monitoring the permit (estimated at the time of application) exceeds $5,000, except when the total estimated fees from the schedule over the term of the permit exceed the estimated actual cost. In that case, the fees from the schedule shall be charged. The authorized officer shall notify the applicant in writing of such charges within 30 days of receipt of the permit application and shall not process said application until payment has been made for such charges.

* * * * *

b. Removing paragraph (b) in its entirety.

c. Redesignating paragraphs (c) and (d), as (b) and (c), respectively, and

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8370

[Circ. No. 2551]

Use Authorizations; Amendment of Subpart 8372—Special Recreation Permits, Other Than on Developed Recreation Sites

Under the authority of 43 U.S.C. 1201, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act (43 U.S.C. 1181a), the Act of September 15, 1960, as amended (16 U.S.C. 670g--n), the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460/–6a), and the National Trails System Act (16 U.S.C. 1241 *et seq.*), Subpart 8372, Part 8370, Group 8300, Subchapter H, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 8730—[AMENDED]

1. Part 8370 is amended by adding immediately after the heading the note:

Note.—The information collection requirements of 43 CFR Part 8370 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1004–0119. The information will be used to determine whether applicants for Special Recreation Permits on public lands should be granted such permits. The obligation to respond is required to obtain a benefit.

§ 8372.0–3 [Amended]

1. Section 8372.0–3 is amended by correcting the citation "16 U.S.C. 460(1–6a)" to read "16 U.S.C. 460/–6a."

§ 8372.0–5 [Amended]

2. Section 8372.0–5 is amended by:

a. Revising paragraph (b) to read as follows:

* * * * *

(b) "Actual expenses" are expenses necessarily incurred for the permitted activity or use. These include, but are not limited to, the actual costs of such items as expendable equipment and supplies. Actual expenses do not include any salaries, profit, increase of capital worth, allowances, or subsidies of any other activities of the permittee or sponsor, the purchase or amortization of nonexpendable supplies or equipment, any allowance for undersubscribed events or any monetary compensation for sponsors or participants."

* * * * *

b. Revising paragraph (e) to read as follows:

* * * * *

(e) "Educational use" is an academic activity sponsored by an accredited institution of learning.

* * * * *

3. Section 8372.0–7 is revised to read as follows:

§ 8372.0–7 Enforcement

(a) *Prohibited acts.* On all public lands and related waters, it is prohibited to: (1) Fail to obtain a permit and pay any fee required by this subpart; (2) violate stipulations or conditions of a permit issued under authority of this subpart; (3) participate knowingly in an event or use subject to the permit requirements of this subpart where no such permit has been issued; (4) fail to post a copy of any commercial or competitive permit where all participants have the opportunity to read it; and (5) fail to show a copy of the special recreation permit to a Bureau of Land Management employee or a participant upon request.

(b) *Penalties.* (1) Any person convicted of committing any prohibited act in this subpart, and violators of regulations or permit terms or stipulations, may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. (2) Authorized as well as unauthorized users may be subject to civil action for unauthorized use of the public lands or related waters and their resources, or violations of the permit terms or stipulations.

4. A new § 8372.1–3 is added to read as follows:

§ 8372.1–3 Exceptions.

(a) Special Recreation Permits are not required for uses that are sponsored or co-sponsored by the Bureau of Land Management.

(b) The authorized officer may determine that permits and fees are unnecessary where a use or event begins and ends on non-public lands or related waters, traverses less than 1 mile of public lands or 1 shoreline mile, and poses no threat of significant damage to public land or water resource values.

(c) The authorized officer may waive permit and fee requirements for competitive events that are not commercial when the events comply with off-road vehicle designations for the use area, no cash prizes are awarded, fewer than 50 vehicles including those of participants and spectators are involved, there is no public advertising for the event and there is no likelihood of significant damage to public land or water resource values or need for monitoring.

5. Section 8372.4 is amended by:

a. Revising paragraph (a) to read as follows:

§ 8372.4 [Amended]

(a) *Fees.* (1) Fees for Special Recreation Permits shall be established and maintained by the Director, Bureau of Land Management, and may be adjusted from time to time to reflect changes in costs. The fee schedule shall be incorporated in the Manual of the Bureau of Land Management, published periodically in the **Federal Register** and otherwise made generally available to the public.

(2) Actual costs to the United States shall be charged in lieu of the fees provided in the schedule when the estimated cost of issuing and monitoring the permit (estimated at the time of application) exceeds $5,000, except when the total estimated fees from the schedule over the term of the permit exceed the estimated actual cost. In that case, the fees from the schedule shall be charged. The authorized officer shall notify the applicant in writing of such charges within 30 days of receipt of the permit application and shall not process said application until payment has been made for such charges.

* * * * *

b. Removing paragraph (b) in its entirety.

c. Redesignating paragraphs (c) and (d), as (b) and (c), respectively, and

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amending paragraph (b), formerly paragraph (c), by redesignating subparagraphs (2) and (3) as (3) and (4), respectively, and inserting a new paragraph (2) to read as follows:

(2) Where the amount of intended use is precisely specified in the application, the fee shall be nonrefundable. However, on receipt by the authorized officer of notification from the applicant of the intention not to use the permit in whole or in part, in sufficient time to allow reallocation of use to others, the authorized officer may refund the fee, less a minimum amount for permit processing.

d. Amending paragraph (c), formerly paragraph (d), by removing paragraphs (c) (4) and (5) in their entirety and revising paragraph (c)(3) to read as follows:

(c) * * *

(3) Applicants for waiver of fees on this basis may be required to provide documentation of their official recognition as educational or scientific institutions by Federal, State or local government bodies or any other documentation necessary to demonstrate educational use as defined in § 8372.0–5(e) of this title. The use of recreational resources for which a waiver on this basis is requested shall relate directly to scientific or educational purposes and shall not be primarily for recreational purposes.

6. New § 8372.6 is added to read as follows:

§ 8372.6 Appeals.

(a) Any person adversely affected by a decision of the authorized officer under this part may appeal under Part 4 of this title from any final decision of the authorized officer.

(b) All decisions of the authorized officer under this part shall remain effective pending appeal unless the Secretary rules otherwise. Petitions for stay of decisions may be made to the Secretary.

Dated: April 18, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84–22879 Filed 8–28–84; 8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 1820 and 1860

[Circular No. 2552]

Public Administrative Procedures; Recordable Disclaimers of Interest in Lands; Correction of Conveyancing Documents

Under the authority of sections 315 and 316 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745, 1746), Part 1860, Group 1800, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 1860—[AMENDED]

1. Part 1860 is amended by:

A. Revising the title to read:

"PART 1860—CONVEYANCES, DISCLAIMERS AND CORRECTION DOCUMENTS"

B. Adding a new Subpart 1864 to read:

Subpart 1864—Recordable Disclaimers of Interest in Land

Sec.

1864.0–1 Purpose.
1864.0–2 Objectives.
1864.0–3 Authority.
1864.0–5 Definitions.
1864.1 Application for issuance of a document of disclaimer.
1864.1–1 Filing of application.
1864.1–2 Form of application.
1864.1–3 Action on application.
1864.1–4 Consultation with other Federal agencies.
1864.2 Decision on application.
1864.3 Issuance of document of disclaimer.
1864.4 Appeals.

Subpart 1864—Recordable Disclaimers of Interest in Land

§ 1864.0–1 Purpose.

The Secretary of the Interior has been granted discretionary authority by section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745) to issue recordable disclaimers of interests in lands. In general, a disclaimer may be issued if the disclaimer will help remove a cloud on the title to lands and there is a determination that such lands are not lands of the United States or that the United States does not hold a valid interest in the lands. These regulations implement this statutory authority of the Secretary.

§ 1864.0–2 Objectives.

(a) The objective of the disclaimer is to eliminate the necessity for court action or private legislation in those instances where the United States asserts no ownership or record interest, based upon a determination by the Secretary of the Interior that there is a cloud on the title to the lands, attributable to the United States, and that:

(1) A record interest of the United States in lands has terminated by operation of law or is otherwise invalid; or

(2) The lands lying between the meander line shown on a plat of survey approved by the Bureau of Land Management or its predecessors and the actual shoreline of a body of water are not lands of the United States; or

(3) Accreted, relicted, or avulsed lands are not lands of the United States.

(b) A disclaimer has the same effect as a quitclaim deed in that it operates to estop the United States from asserting a claim to an interest in or the ownership of lands that are being disclaimed. However, a disclaimer does not grant, convey, transfer, remise, quitclaim, release or renounce any title or interest in lands, nor does it operate to release or discharge any tax, judgement or other lien, or any other mortgage, deed or trust or other security interest in lands that are held by or for the benefit of the United States or any instrumentality of the United States.

(c) The regulations in this subpart do not apply to any disclaimer, release, quitclaim or other similar instrument or declaration, that may be issued pursuant to any provision of law other than section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745).

§ 1864.0–3 Authority.

Section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745), authorizes the Secretary of the Interior to issue a recordable disclaimer, where the disclaimer will help remove a cloud on the title of such lands, if certain determinations are made and conditions are met.

§ 1864.0–5 Definitions.

As used in this subpart, the term:

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(a) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(b) "Accreted lands" have the meaning imparted to them by applicable law. In general, they are lands that have been gradually and imperceptibly formed along the banks of a body of water by deposition of water-borne soil.

(e) "Avulsed lands" have the meaning imparted to them by applicable law. In general, they are lands that have been uncovered by a relatively sudden change in alignment of the channel of a river, or by a comparable change in some other body of water, or that remain as uplands following such a change, or that are located in the bed of the new channel.

(d) "Actual shoreline" means the line which is washed by the water wherever it covers the bed of a body of water at its mean high water level.

(e) "Lands" means lands and interests in lands now or formerly forming a part of the reserved or unreserved public lands of the contiguous 48 States and Alaska and as to any coastal State, includes submerged lands inside of the seaward boundary of the State.

(f) "Meander line" means a survey line established for the purpose of representing the location of the actual shoreline of a permanent natural body of water, without showing all the details of its windings and irregularities. A meander line rarely runs straight for any substantial distance. It is established not as a boundary line but in order to permit calculation of the quantity of lands in the fractional sections remaining after segregation of the water area.

(g) "Relicted lands" have the meaning imparted that term by applicable law. In general, they are lands gradually uncovered when water recedes permanently.

§ 1864.1 Application for issuance of a document of disclaimer.

§ 1864.1-1 Filing of application.

(a) Any present owner of record may file an application to have a disclaimer of interest issued if there is reason to believe that a cloud exists on the title to the lands as a result of a claim or potential claim by the United States and that such lands are not subject to any valid claim of the United States.

(b) Prior to the acceptance for filing of an application under this subpart, the authorized officer should discuss the proposal with the proposed applicant to determine if the regulations in this subpart apply.

(c) An application shall be filed in writing with the proper Bureau of Land Management office as listed in § 1821.2-1(d) of this title.

§ 1864.1-2 Form of application.

(a) No specific form of application is required.

(b) A nonrefundable fee of $100 shall accompany the application.

(c) Each application shall include:

(1) A legal description of the lands for which a disclaimer is sought. The legal description shall be based on either an official United States public land survey or, in the absence of or inappropriateness (irregularly shaped tracts) of an offical public land survey, a metes and bounds survey (whenever practicable, tied to the nearest corner of an official public land survey), duly certified in accordance with State law, by the licensed civil engineer or surveyor who executed or supervised the execution of the metes and bounds survey. A true copy of the field notes and plat of survey shall be attached to and made a part of the application. If reliance is placed in whole or in part on an official United States public land survey, such survey shall be adequately identified for record retrieval purposes;

(2) The applicant's name, mailing address, and telephone number and the names addresses and telephone numbers of others known or believed to have or claim an interest in the lands;

(3) All documents which show to the satisfaction of the authorized officer the applicant's title to the lands;

(4) As complete a statement as possible concerning:

(i) The nature and extent of the cloud on the title, and

(ii) The reasons the applicant believes:

(A) The record title interest of the United States in the lands included in the application has terminated by operation of law or is otherwise invalid, including a copy or legal citation of relevant provisions of law; or

(B) The lands between the meander line shown on the plat of survey approved by the Bureau of Land Management or its predecessors and the actual shoreline of a body of water are not lands of the United States, including as documentation an official plat of survey or a reference to a date of filing or approval and, if the applicant elects, any non-Federal survey plats related to the issue; or

(C) The lands are accreted, relicted or avulsed and are no longer lands of the United States, including submission for the uplands portion of the body of water affected a copy of an official plat of survey or a reference to it by date of filing or approval and, if the applicant elects, any non-Federal survey plats related to the issue;

(5) Any available documents or title evidence, such as historical and current maps, photographs, and water movement data, that support the application;

(6) The name, mailing address, and telephone number of any known adverse claimant or occupant of the lands included in the application;

(7) Any request the applicant may have that the disclaimer be issued in a particular form suitable for use in the jurisdiction in which it will be recorded; and

(d) Based on prior discussions with the applicant, the authorized officer may waive any or all of the aforementioned items if in his/her opinion they are not needed to properly adjudicate that application.

§ 1864.1-3 Action on application.

(a) An application shall be denied by the authorized officer if:

(1) More than 12 years have elapsed since the owner knew or should have known of the alleged claim attributed to the United States;

(2) The application pertains to a security interest or water rights; or

(3) The application pertains to trust or restricted Indian lands:

(b) The authorized officer shall, if the application meets the requirements for further processing, determine the amount of deposit needed to cover the administrative costs of processing the application and issuing a disclaimer.

(c) The applicant shall submit a deposit in an amount determined by authorized officer.

(d) If the application is concerned with what may be omitted lands, it shall be processed in accordance with the applicable provisions of Part 9180 of this title. If the application is determined by the authorized officer to involve omitted lands, the applicant shall be so notified in writing.

§ 1864.1-4 Consultation with other Federal agencies.

If the lands included in the application are under the administrative jurisdiction of a Federal agency other than the Department of the Interior or if the issuance of a disclaimer for the lands would, to the Bureau of Land Management's knowledge, directly affect another Federal agency, the authorized officer shall refer the application to that Federal agency for comment.

§ 1864.2 Decision on application.

(a) The authorized officer shall notify the applicant and any party adverse to the application, in writing, on the determination of the authorized officer on whether or not to issue a disclaimer. Prior to such notification, the authorized officer shall issue to the applicant a billing that includes a full and complete statement of the cost incurred in reaching such determination, including any sum due the United States or that may be unexpended from the deposit made by the applicant. If the administrative costs exceed the amount of the deposit required of the applicant under this subpart, the applicant shall be informed that a payment is required for the difference between the actual costs and the deposit. The notification shall also require that payment be made within 120 days from the date of mailing of the notice. If the deposit exceeds the administrative costs of issuing the disclaimer, the applicant shall be informed that a credit for or a refund of the excess will be made. Failure to pay the required amount within the allotted time shall constitute grounds for rejection of the application. Before the authorized officer makes a determination to issue a disclaimer, he/she shall publish notice of the application, including the grounds supporting it, in the **Federal Register.** Publication in the **Federal Register** shall be made at least 90 days preceding the issuance of a decision on the disclaimer. Notice shall be published in a newspaper located in the vicinity of the lands covered by the application once a week for 3 consecutive weeks during the 90-day period set out herein. Neither publication shall be made until the applicant has paid the administrative costs.

§ 1864.3 Issuance of document of disclaimer.

Upon receipt of the payment required by §§ 1864.1–2(b), 1864.1–3(c) and 1864.2 of this title and following, by not less than 90 days, the publication required by § 1864.2 of this title, the authorized officer shall make a decision upon the application, and if the application is allowed, shall issued to the applicant an instrument of disclaimer.

§ 1864.4 Appeals.

An applicant or claimant adversely affected by a written decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal pursuant to 43 CFR Part 4.

2. Part 1860 is amended by adding a new subpart 1865 as follows:

Subpart 1865—Correction of Conveyancing Documents

Sec.
1865.0–1 Purpose.
1865.0–2 Objective.
1865.0–3 Authority.
1865.0–5 Definitions.
1865.1–1 Application for correction of conveyancing documents.
1865.1–1 Filing of application.
1865.1–2 Form of application.
1865.1–3 Action on application.
1865.2 Issuance of corrected patent or document of conveyance.
1865.3 Issuance of patent or document of conveyance on motion of authorized officer.
1865.4 Appeals.

Subpart 1865—Correction of Conveyancing Documents

§ 1865.0–1 Purpose.

The purpose of these regulations is to implement section 316 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1746), which affords to the Secretary of the Interior discretionary authority to correct errors in patents and other documents of conveyance pertaining to the disposal of the public lands of the United States under laws administered through the Bureau of Land Management or its predecessors.

§ 1865.0–2 Objective.

The objective of a correction document is to eliminate from the chain of title errors in patents or other documents of conveyance that have been issued by the United States under laws administered by the Bureau of Land Management or its predecessors and that pertain to the disposal of the public lands or of an interest therein.

§ 1865.0–3 Authority.

Section 316 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1746) authorizes the Secretary of the Interior to correct patents and other documents of conveyance issued at any time pursuant to the laws relating to the disposal of the public lands where the Secretary of the Interior deems it necessary or appropriate to do so in order to eliminate errors.

§ 1865.0–5 Definitions.

As used in this subpart, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this subpart.

(b) "Error" means the inclusion of erroneous descriptions, terms, conditions, covenants, reservations, provisions and names or the omission of requisite descriptions, terms, conditions, covenants, reservations, provisions and names either in their entirety or in part, in a patent or document of conveyance as a result of factual error. This term is limited to mistakes of fact and not of law.

(c) "Patents or other documents of conveyance" means a land patent, a deed or some other similar instrument in the chain of title to realty that has been issued by the United States under laws administered by the Bureau of Land Management or its predecessors pertaining to the disposal of the public lands of the United States or of an interest therein. It also includes interim conveyances issued under the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.), and approvals and tentative approvals issued under the Act of July 7, 1958, as amended (72 Stat. 339).

(d) "Lands" mean lands or interest in lands.

§ 1865.1 Application for correction of conveyancing documents.

§ 1865.1–1 Filing of application.

(a) Any claimant asserting ownership of lands described in and based upon a patent or other document of conveyance containing an alleged error may file an application to correct the alleged error.

(b) An application shall be filed in writing with the proper Bureau of Land Management office as listed in § 1821.2–1(d) of this title.

§ 1865.1–2 Form of application.

(a) No specific form of application is required.

(b) A non-refundable fee of $100 shall accompany the application.

(c) Each application shall include:

(1) The name, mailing address, and telephone number of the applicant and any others known to the applicant that hold or purport to hold any title or other interest in, lien on or claim to the lands described in the patent or other document of conveyance containing the alleged error as to which the corrective action is requested, and if the error involves a misdescription, the land that would be affected by the corrective action requested;

(2) All documents which show the applicant's title to the lands included in the application;

(3) A certified copy of any patent or other document conveying any lands included in the application to the applicant or predecessor(s) in interest; and

(4) As complete a statement as possible concerning:

(i) The nature and extent of the error;

(ii) The manner in which the error can be corrected or eliminated; and

(iii) The form in which it is recommended the corrected patent or document of conveyance be issued.

§ 1865.1-3 Action on application.

The authorized officer, upon review of the factual data and information submitted with the application, and upon a finding that an error was made in the patent or document of conveyance and that the requested relief is warranted and appropriate, shall give written notification to the applicant and make a reasonable effort to give written notification to any others known to have or believed to have or claim an interest in the lands that a corrected patent or document of conveyance shall be issued. The notification shall include a description of how the error is to be corrected or eliminated in the patent or document of conveyance. The notice shall require the applicant to surrender the original patent or other document of conveyance to be corrected. Where such original document is unavailable, a statement setting forth the reasons for its unavailability shall be submitted in lieu of the original document. The notice may include a requirement for quitclaiming to the United States the lands erroneously included, and shall specify any terms and conditions required for the quitclaim.

§ 1865.2 Issuance of corrected patent or document of conveyance.

Upon the authorized officer's determination that all of the requirements of the Act for issuance of a corrected patent or document of conveyance have been met, the authorized officer shall issue a corrected patent or document of conveyance.

§ 1865.3 Issuance of patent or document of conveyance on motion of authorized officer.

The authorized officer may initiate and make corrections in patents or other documents of conveyance on his/her own motion, if all existing owners agree.

§ 1865.4 Appeals.

An applicant or claimant adversely affected by a decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal pursuant to 43 CFR Part 4.

PART 1820—APPLICATION PROCEDURES

§§ 1821.6—1821.6-6 [Removed]

§§ 1821.7—1821.7-2 [Redesignated as §§ 1821.6 through 1821.6-2]

3. Part 1820 is revised by removing §§ 1821.6 through 1821.6-6 in their entirety and by redesignating §§ 1821.7 through 1821.7-2 as §§ 1821.6 through 1821.6-2.

Dated: August 16, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-23490 Filed 9-5-84; 8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[Circular No. 2553]

Onshore Oil and Gas Operations; Implementation of the Federal Oil and Gas Royalty Management Act of 1982

Under the authority of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701) and Executive Order 12291 (46 FR 13193), Part 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as follows.

PART 3160—ONSHORE OIL AND GAS OPERATIONS

1. The authority citation for Part 3160 is amended by adding the phrase "the Federal Oil and Gas Royalty Management Act of 1982 [30 U.S.C. 1701]; and the Indian Mineral Development Act of 1982 [25 U.S.C. 2102]."

§ 3160.0-5 [Amended]

2. Section 3160.0-5 is amended by:

A. Adding the term *Authorized Representative* to read:

Authorized Representative. Any entity or individual authorized by the Secretary to perform duties by cooperative agreement, delegation, or contract.

B. Adding the term *Federal Lands* to read:

Federal Lands. All lands and interests in lands owned by the United States which are subject to the mineral leasing laws, including mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate.

C. Revising the term *Lease* to read:

Lease. Any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil or gas.

D. Removing the term *Leased Lands, Leasehold;*

E. Adding the term *Lease Site* to read:

Lease Site. Any lands, including the surface of a severed mineral estate, on which exploration for, or extraction and removal of, oil or gas is authorized pursuant to a lease.

F. Revising the term *Lessee* to read:

Lessee. The party authorized by or through a lease or an approved assignment thereof, to explore for, develop and produce oil and gas on the lease site in accordance with the lease terms, regulations, and law. For convenience of reference throughout this part, the term lessee also refers to and includes the owners of approved operating rights and designated operators.

G. Adding the term *Person* to read:

Person. Any individual, firm, corporation, association, partnership, consortium or joint venture.

3. A new § 3161.3 is added to read:

§ 3161.3 Inspections.

(a) The authorized officer shall establish procedures to ensure that each Federal and Indian lease site which is producing or is expected to produce significant quantities of oil or gas in any year or which has a history of noncompliance with applicable provisions of law or regulations, lease terms, orders or directives shall be inspected at least once annually. Similarly, each lease site on non-Federal or non-Indian lands subject to a formal agreement such as a unit or communitization agreement which has been approved by the Department of the Interior and in which the United States

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or the Indian lessors share in production shall be inspected annually whenever any of the foregoing criteria are applicable.

(b) In accomplishing the inspections, the authorized officer may utilize Bureau Personnel, may enter cooperative agreements with States of Indian Tribes, may delegate the inspection authority to any State, or may contract with non-Federal Governmental entities. Any cooperative agreement, delegation or contractual arrangement shall not be effective without concurrence of the Secretary and shall include applicable provisions of the Federal Oil and Gas Royalty Management Act.

§ 3162.1 [Amended]

4. Section 3162.1 is amended by designating the existing paragraph as paragraph (a) and adding new paragraph (b) and (c) to read:

(b) The lessee shall permit properly identified authorized representatives to enter upon, travel across and inspect lease sites and records normally kept on the lease pertinent thereto without advance notice. Inspections normally will be conducted during those hours when responsible persons are expected to be present at the operation being inspected. Such permission shall include access to secured facilities on such lease sites for the purpose of making any inspection or investigation for determining whether there is compliance with the mineral leasing laws, the regulations in this part, and any applicable orders notices or directives.

(c) For the purpose of making any inspection or investigation, the Secretary or his authorized representative shall have the same right to enter upon or travel across any lease site as the lessee or operator has. acquired by purchase, condemnation or otherwise.

§ 3162.4-1 [Amended]

5. Section 3162.4-1 is amended by:

A. Amending paragraph (a) by removing the phrase "disposition of leasehold products" from the first sentence;

B. Revising paragraph (c) to read:

(c) Not later than the 5th business day after any well begins production on which royalty is due anywhere on a lease site or allocated to a lease site, or resumes production in the case of a well which has been off production for more than 90 days, the operator shall notify the authorized officer by letter or sundry notice, Form 3160-5, or orally to be followed by a letter or sundry notice, of the date on which such production has begun or resumed.

C. Adding a new paragraph (d) to read:

(d) All records and reports required by this section shall be maintained for 6 years from the date they were generated. In addition, if the Secretary, or his/her designee notifies the recordholder that the Department of the Interior has initiated or is participating in an audit or investigation involving such records, the records shall be maintained until the Secretary, or his/her designee, releases the recordholder from the obligation to maintain such records.

§ 3162.7-1 [Amended]

6. Section 3162.7-1 is amended by:

A. Revising paragraphs (c) and (d) to read:

(c) (1) Any person engaged in transporting by motor vehicle any oil from any lease site, or allocated to any such lease site, shall carry on his/her person, in his/her vehicle, or in his/her immediate control, documentation showing at a minimum; the amount, origin, and intended first purchaser of the oil.

(2) Any person engaged in transporting any oil or gas by pipline from any lease site, or allocated to any lease site, shall maintain documentation showing, at a minimum, the amount, origin, and intended first purchaser of such oil or gas.

(3) On any lease site, any authorized representative who is properly identified may stop and inspect any motor vehicle that he/she has probable cause to believe is carrying oil from any such lease site, or allocated to such lease site, to determine whether the driver possesses proper documentation for the load of oil.

(4) Any authorized representative who is properly identified and who is accompanied by an appropriate law enforcement officer, or an appropriate law enforcement officer alone, may stop and inspect any motor vehicle which is not on a lease site if he/she has probable cause to believe the vehicle is carrying oil from a lease site, or allocated to a lease site, to determine whether the driver possesses proper documentation for the load of oil.

(d) The lessee shall conduct operations in such a manner as to prevent avoidable loss of oil and gas. A lessee shall be liable for royalty payments on oil or gas lost or wasted from a lease site, or allocated to a lease site, when such loss or waste is due to negligence on the part of the lessee of such lease, or due to the failure of the lessee to comply with any regulation, order or citation issued pursuant to this part.

B. Adding a new paragraph (f) to read:

(f) Any records generated under this section shall be maintained for 6 years from the date they were generated or, if notified by the Secretary, or his designee, that such records are involved in an audit or investigation, the records shall be maintained until the recordholder is released by the Secretary from the obligation to maintain them.

§ 3162.7-2 [Amended]

7. Section 3162.7-2 is amended by removing from the beginning of the first paragraph the figure "(a)" and by removing paragraph (b) in its entirety.

§ 3162.7-3 [Amended]

8. Section 3162.7-3 is amended by removing from the beginning of the first paragraph the figure "(a)" and by removing paragraph (b) in its entirety.

9. Section 3162.8 is amended by adding new paragraphs (e), (f) and (g) to read:

§ 3162.8 Confidentiality.

* * * * *

(e) Trade secrets, proprietary and other confidential information obtained pursuant to this part shall be made available to States and Indian Tribes upon their request for the purpose of conducting an investigation if:

(1) such State or Indian Tribe consents in writing to restrict the dissemination of the information to those who are directly involved in an investigation under a cooperative agreement approved by the Secretary, and who need to know;

(2) such State or Indian Tribe accepts liability for wrongful disclosure;

(3) in the case of a State, such State demonstrates that such information is essential to the conduct of an investigation or to litigation; and

(4) in the case of an Indian Tribe, such Tribe demonstrates that such information is essential to the conduct of an investigation and waives sovereign immunity by express consent for wrongful disclosure by such Tribe.

(f) The United States shall not be liable for the wrongful disclosure by any individual, State, or Indian Tribe of any information provided to such individual, State, or Indian Tribe pursuant to any cooperative agreement or a delegation.

(g) Whenever any individual, State or Indian Tribe has obtained possession of information pursuant to a cooperative agreement or any individual or State has obtained possession of information pursuant to a delegation of authority, the individual shall be subject to the same provisions of law with respect to the

disclosure of such information as would apply to an officer or employee of the United States or of any Department or agency thereof and the State or Indian tribe shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to the United States or any Department or agency thereof. No State or State officer or employee who receives trade secrets, proprietary information or other confidential information under Title II of the Federal Oil and Gas Royalty Management Act may be required to disclose such information under State Law.

§ 3163.3 [Amended]

10. Section 3163.3 is amended by amending paragraph (e) by removing the last sentence of the introductory paragraph and by inserting immediately prior to the figure "$100" the phrase "or a production facility,".

§ 3163.4 [Amended]

11. Section 3163.4 is amended by removing all after the title and by adding new section 3163.4–1 and 3163.4–2 to read:

§ 3163.4–1 Administrative penalties.

(a) *Mineral Leasing Act* (1) Whenever a lessee fails to comply with any provisions of the lease, the regulations in this part, applicable orders or notices, or any other appropriate orders of the authorized officer, the authorized officer shall give the lessee notice in writing to remedy any defaults or violations.

(2) If there is a failure to complete the necessary remedial action within the time and in the manner prescribed by the notice, the lessee shall be liable for a penalty of not more than $500 per day for each day the violation continues beyond the date specified in the notice through the 20th day of such noncompliance.

(3) A penalty shall be imposed under paragraph (a) of this section for the failure to abate violations which are required to be corrected in less than 20 days from the date of the report or notice.

(4) A notice of proposed penalty shall be issued and served by personal service by an authorized officer or by certified mail. Service shall be deemed to occur when received or 5 days after the date it is mailed, whichever is earlier. Any person may designate a representative to receive any notice on their behalf. Any person authorized by the lessee to submit reports, notices, affidavits, records, or other information required by regulations in this part or who is authorized by the lessee to conduct or supervise operations subject to regulations in this part may receive the notices. If no designation pertaining to that lease has been filed, the notice shall be served as previously described. A person charged with a violation and served with a notice of civil penalty under this paragraph may request a technical and procedural review under § 3165.3 of this title within 10 working days of receipt of the notice. Such review shall be limited to the issues of whether a violation actually existed and, if so, whether the gravity attached to the violation was appropriate, and whether a reasonable abatement period was prescribed. Within 30 days of service of a notice of penalty, or within 15 days of receipt of the decision on the technical and procedural review, whichever is later, the person charged shall either file an appeal pursuant to part 4 of this title or pay the civil penalty.

(b) *Federal Oil and Gas Royalty Management Act* (1) Whenever a lessee fails or refuses to comply with any applicable requirements of the Federal Oil and Gas Royalty Management Act, any mineral leasing law, any rule or regulation thereunder, or the terms of any lease or permit issued thereunder, the authorized officer shall notify the lessee in writing of the violation, unless the violation was discovered and reported to the authorized officer by the liable person or the notice as previously issued under paragraph (a) of this section. If the violation is not corrected within 20 days of such notice or report, or such longer time as the authorized officer may agree to in writing, the lessee shall be liable for a civil penalty of up to $500 per violation for each day such violation continues, dating from the date of such notice or report. This notice shall be issued and served by personal service by an authorized officer or by certified mail. Service shall be deemed to occur when received or 5 days after the date it is mailed, whichever is earlier.

(2) If the violation specified in paragraph (b)(1) of this paragraph is not corrected within 40 days of such notice or report, or a longer period as the authorized officer may agree to in writing, the lessee shall be liable for a civil penalty of not more than $5,000 per violation for each day the violation continues, not to exceed a maximum of 60 days, dating from the date of such notice or report.

(3) In the event the authorized officer agrees to an abatement period of more than 20 days, the date of notice shall be deemed to be 20 days prior to the end of such longer abatement period for the purpose of civil penalty calculation.

(4) Whenever a transporter fails to permit inspection of proper documentation by any authorized representative, as provided in § 3162.7–1(c) of this title, the transporter shall be liable for a civil penalty of up to $500 per day for the violation, not to exceed a maximum of 20 days, dating from the date of notice of the failure to permit inspection and continuing until the proper documentation is provided.

(5) Any person who:

(i) Fails or refuses to permit lawful entry or inspection authorized by § 3162.1(b) of this title; or

(ii) Knowingly or willfully fails to notify the authorized officer by letter or Sundry Notice, form 3160–5, or orally to be followed by a letter or Sundry Notice, not later than the 5th business day after any well begins production on which royalty is due, or resumes production in the case of a well which has been off of production for more than 90 days, from a well located on a lease site, or allocated to a lease site, of the date on which such production began or resumed; shall be liable for a civil penalty of up to $10,000 per violation for each day such violation continues, not to exceed a maximum of 20 days.

(6) Any person who:

(i) Knowingly or willfully prepares, maintains or submits false, inaccurate or misleading reports, notices, affidavits, records, data or other written information required by this part; or

(ii) Knowingly or willfully takes or removes, transports, uses or diverts any oil or gas from any Federal of Indian lease site without having valid legal authority to do so; or

(iii) Purchases, accepts, sells, transports or conveys to another any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted from a Federal of Indian lease site; shall be liable for a civil penalty of up to $25,000 per violation for each day such violation continues, not to exceed a maximum of 20 days.

(7)(i) Notice of violation imposed by the authorized officer under this section shall be by personal service or by certified mail. Any person may designate a representative to receive any notice of their behalf. Any person who is authorized by the lessee to submit reports, notices, affidavits, records data or other information required by this part or who is authorized by the lessee to conduct or supervise operations subject to regulations in this part may receive the notices. If no designation has been filed, the notice shall be served as previously described.

(ii) A person charged with a violation and served with a notice of civil penalty may request a technical and procedural review under § 3165.3 of this title within 10 working days of receipt of the notice. Such review shall be limited to the issues of whether a violation actually existed and, if so, whether the gravity attached to the violation was appropriate, and whether a reasonable abatement period was prescribed. Within 30 days of service of a notice of penalty, or within 15 days of receipt of the decision on the technical and procedural review, whichever is later, the person charged shall either request a hearing on the record or pay the civil penalty. A request for a hearing shall be filed within the time allowed in the office of the State Director having jurisdiction of the lands covered by the lease. No civil penalty shall be assessed under this section until the person charged with the violation has been given the opportunity for a hearing on the record under Part 4 of this title.

(8) On a case-by-case basis, the Secretary may compromise or reduce civil penalties under paragraph (b) of this section. In compromising or reducing the amount of a civil penalty under paragraph (b) of this section, the Secretary shall state on the record the reasons for his/her determinations.

(9) Any person who has requested a hearing in accordance with paragraph (b)(7) of this section and who is aggrieved by a final order of the Secretary under this section may seek review of such order in the United States District Court for the judicial district in which the alleged violation occurred. Review by the district court shall be on the administrative record only and not de novo. Such an action shall be barred unless filed within 90 days after the Secretary's final order.

(10) Civil penalties provided by this section shall be supplemental to, and not in derogation of, any other penalties or assessments for noncompliance in any other provision of law.

(11) If the violation continues beyond the 60-day maximum specified in paragraph (b)(2) of this section or beyond the 20-day maximum specified in paragraphs (b)(5) and (b)(6) of this section, lease cancellation proceedings shall be initiated under either Title 43 or Title 25 of the Code of Federal Regulations.

(12) If the violation continues beyond the 20-day maximum specified in paragraph (b)(4) of this section, the District Manager shall revoke the transporter's authority to remove crude oil or other liquid hydrocarbons from any Federal or Indian lease under the authority of that District Manager or to remove any crude oil or liquid hydrocarbons allocated to such lease site. This revocation of the transporter's authority shall continue until compliance is achieved and the related penalty paid.

(c) If any person fails to pay an assessment of a civil penalty under paragraph (b) of this section after the order making the assessment has become a final order, and if such person does not file a petition for judicial review in accordance with this subpart, or, after a court in an action brought under this subpart has entered a final judgment in favor of the Secretary, the court shall have jurisdiction to award the amount assessed plus interest from the date of the expiration of the 90-day period provided by paragraph (b)(9) of this section. Judgment by the court shall include an order to pay.

(d) The common drilling, production and abandonment related violations are categorized into 3 noncompliance ranges. The category for any violation is the gravity level to be used for that violation. Based on individual circumstances and with the appropriate documentation, the gravity of a violation may be upgraded or downgraded by 1 level. The Director shall establish a detailed list of potential violations. The violations shall be either:

(1) A minor violation which does not affect the safety of the workplace, nor does it degrade the environment or affect the amount of royalty income; or

(2) A moderate violation, which if left uncorrected, may eventually affect the safety of the workplace, degrade the environment and/or affect royalty income; or

(3) A major violation which has the immediate potential to affect the safety of the workplace, degrade the environment and/or affect the royalty income.

(e) Determination of Penalty Amount for paragraphs (a) and (b) of this section are as follows:

(1) The amount of the administrative penalty proposed shall be based upon the formula set forth in this subsection. The formula is based on 2 criteria: i.e., the gravity of the violation; and the lessee's or transporter's history of previous violations;

(2) The appropriate number of penalty points shall be assigned to each criterion using the appropriate tables as denoted and the 2 numbers shall then be totaled, and the point accumulation converted into a dollar per day amount by using Penalty Conversion Table A, B, C or D, as appropriate, and the amounts added, if necessary.

(3) Table I—Gravity of the Violation:

Classification	Penalty points
Minor violations	11
Moderate violations	41
Major violations	71

(4) Table II—Lessee's or Transporter's History of Past Violations:

Minor violations	Number × ½ =
Moderate violations	Number × 2 =
Major violations	Number × 5 =

Total—(rounded down to the nearest whole number) (maximum of 29).

History of previous violations standards. History is based on the number of violations issued in a preceding 36-month period beginning February 1, 1983. The history of previous violations may account for a maximum of 29 penalty points. The penalty points shall be calculated on an lessee-by-lessee and lease-by-lease basis and, in the case of transporters, on a transporter-by-transporter basis within the jurisdictional area of each Bureau of Land Management District Office.

(5) Penalty Conversion Table—A (Lessees):

(i) The following penalty conversion tables are for violations not corrected within the time allowed in paragraph (a) of this section, or by the 20th day under paragraph (b)(1) of this section, or by the 40th day under paragraph (b)(2) of this section or such other time period as the authorized officer may specify and shall be used to convert the accumulation of penalty points from Tables I and II above to the appropriate dollar per day proposed penalty.

PENALTY CONVERSION TABLE—A

Points	Not corrected for up to 40 days-penalty/dollars per day under paragraph (a) and/or (b)	Not corrected in 40 days—penalty/dollars per day
40	75	750
41	79	790
42	82	820
43	86	860
44	89	890
45	93	930
46	97	970
47	101	1,010
48	105	1,050
49	109	1,090
50	113	1,130
51	117	1,170
52	122	1,220
53	126	1,260
54	131	1,310
55	135	1,350
56	140	1,400
57	145	1,450
58	150	1,500
59	156	1,560
60	160	1,600
61	166	1,660

PENALTY CONVERSION TABLE—A—Continued

Points	Not corrected for up to 40 days-penalty/dollars per day under paragraph (a) and/or (b)	Not corrected in 40 days—penalty/dollars per day
62	171	1,710
63	177	1,770
64	182	1,820
65	188	1,880
66	194	1,940
67	200	2,000
68	206	2,060
69	212	2,120
70	218	2,180
71	225	2,250
72	233	2,330
73	243	2,430
74	250	2,500
75	258	2,580
76	266	2,660
77	274	2,740
78	282	2,820
79	290	2,900
80	298	2,980
81	306	3,060
82	315	3,150
83	323	3,230
84	332	3,320
85	340	3,400
86	349	3,490
87	358	3,580
88	367	3,670
89	376	3,760
90	385	3,850
91	395	3,950
92	405	4,050
93	415	4,150
94	425	4,250
95	435	4,350
96	448	4,480
97	461	4,610
98	474	4,740
99	487	4,870
100	500	5,000

(ii) In order to focus particularly on serious violations, while also considering an operator's past compliance history, no dollar penalty shall be proposed for violations totaling less than 40 penalty points.

(6) Penalty Conversion Table A (Transporters):

The amount of the proposed civil penalty for failure of a transporter to permit inspection of proper documentation required by paragraph (b)(4) of this section shall be determined by formula based on the following criteria: i.e., the violation shall be considered a major violation (see Table I); and the transporter's history of previous violations (see Table II). Penalty points shall be assigned to each criterion and the 2 numbers shall then be totaled, and the point accumulation converted to a dollar per day amount by using the first column of "Penalty Conversion Table A"

(7) Penalty Conversion Table (B):

(i) The amount of the proposed civil penalty for violation of paragraph (b)(5) of this section shall be determined by the formula based on the following criteria; i.e., the specific violation (Table III); and the lessee's history of previous violations (Table II).

(ii) Penalty points shall be assigned to each criterion and the 2 numbers shall then be totaled, and the point accumulation converted to a dollar per day amount by using "Penalty Conversion Table B."

TABLE III—TYPE OF VIOLATION

Violation	Penalty points
Fail to permit entry upon the leasehold	70
Fails to permit inspection	60
Knowingly or willfully fails to notify after well begins or resumes production by the 5th business day thereafter	65

(iii) The following penalty conversion table shall be used to convert the accumulation of penalty points from Tables II and III to the appropriate per day proposed monetary penalty.

PENALTY CONVERSION TABLE—B

Points	Penalty dollars per day
60	3,600
61	3,720
62	3,840
63	3,970
64	4,100
65	4,220
66	4,360
67	4,490
68	4,620
69	4,760
70	4,900
71	5,040
72	5,180
73	5,330
74	5,480
75	5,630
76	5,780
77	5 930
78	6,080
79	6,240
80	6,400
81	6,560
82	6,720
83	6,890
84	7,060
85	7,220
86	7,400
87	7,570
88	7,740
89	7,920
90	8,100
91	8,280
92	8,460
93	8,650
94	8,840
95	9,030
96	9,220
97	9,410
98	9,600
99	9,800
100 and above	10,000

(8) Penalty Conversion Table—C:

(i) The amount of the proposed civil penalty for violations of paragraph (b)(6) of this section shall be determined by the formula based on the following criteria: i.e., the specific violation (Table IV); and the lessee's history of previous violations (Table II).

(ii) Penalty points shall be assigned to each criterion and the 2 numbers shall then be totaled, and the point accumulation converted to a dollar per day amount by using "Penalty Conversion Table—C."

TABLE IV—TYPE OF VIOLATION

Violation	Penalty points
Knowingly or willfully prepares, maintains or submits false or misleading written information	70
Knowingly or willfuly prepares, maintains or submits inaccurate written information	60
Knowingly or willfully removes, uses or diverts oil or gas from any lease without having legal authority to do so	70
Purchases, accepts, sells, transport or conveys to another any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted	70

(iii) The following penalty conversion table shall be used to convert the accumulation of penalty points from Tables II and IV to the appropriate per day proposed monetary penalty.

PENALTY CONVERSION TABLE—C

Points	Penalty dollars per day
60	9,000
61	9,300
62	9,600
63	9,925
64	10,250
65	10,550
66	10,900
67	11,225
68	11,550
69	11,900
70	12,250
71	12,600
72	12,950
73	13,325
74	13,700
75	14,075
76	14,450
77	14,825
78	15,200
79	15,600
80	16,000
81	16,400
82	16,800
83	17,225
84	17,650
85	18,050
86	18,500
87	18,925
88	19,350
89	19,800
90	20,250
91	20,700
92	21,150
93	21,625
94	22,100
95	22,575
96	23,050
97	23,525
98	24,000
99	24,500
100 and above	25,000

§ 3163.4–2 Criminal penalties.

Any person who commits an act for which a civil penalty is provided in § 3163.4–1(b)(6) of this title shall, upon conviction, be punished by a fine of not

more than $50,000 or by imprisonment for not more than 2 years or both.

12. Section 3163.5 is amended by:

A. Revising the title and paragraphs (a) and (b) to read:

§ 3163.5 Assessments and administrative penalties.

(a) Assessments made under § 3163.3 of this title are due upon issuance and shall be paid within 30 days of receipt of certified mail written notice or personal service, as directed by the authorized officer in the notice. Failure to pay assessed damages timely will be subject to late payment charges as prescribed under Title 30 CFR Group 202.

(b) Administrative penalties under § 3163.4–1 of this title shall be paid within 30 days of completion of any final order of the Secretary or the final order of the Court.

B. Adding to the end of paragraph (c) the sentence "The amount of any civil penalty under § 3163.4–1(b) of this title, as finally determined, may be deducted from any sums owing by the United States to the person charged."

13. A new § 3163.6 is added to read as follows:

§ 3163.6 Injunction and specific performance.

(a) In addition to any other remedy under this part or any mineral leasing law, the Attorney General of the United States or his designee may bring a civil action in a district court of the United States to:

(1) restrain any violation of the Federal Oil and Gas Royalty and Management Act or any mineral leasing law of the United States; or

(2) compel the taking of any action required by or under the Act or any mineral leasing law of the United States.

(b) A civil action described in paragraph (a) may be brought only in the United States district court of the judicial district wherein the act, omission or transaction constituting a violation under the Act or any other mineral leasing law occurred, or wherein the defendant is found or transacts business.

Dated: August 15, 1984.

Garry E. Carruthers,

Acting Secretary of the Interior.

[FR Doc. 84–25036 Filed 9–20–84; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3200, 3470, and 3500

[Circular No. 2554]

Oil and Gas Leasing; Geothermal Resources Leasing; Coal Management Provisions and Limitations; and Leasing of Solid Minerals Other Than Coal and Oil Shale; Amendment Changing the Collection Process for Mineral Leases

DEPT. OF INTERIOR
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Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), the Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025), the Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083–1092) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Groups 3100, 3200, 3400 and 3500, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 3100—[AMENDED]

§ 3103.1-2 [Amended]

1. Section 3103.1-2(a) is amended by:

A. Amending paragraph (1) by removing the last sentence thereof in its entirety; and

B. Amending paragraph (2) by removing the phrase "for nonproducing leases not covered by paragraph (a)(1) of this section".

PART 3200—[AMENDED]

§ 3205.1-2 [Amended]

2. Section 3205.1-2(a) is amended by:

A. Amending paragraph (1) by removing the last sentence thereof in its entirety; and

B. Amending paragraph (2) by removing the phrase "not covered by paragraph (a)(1) of this section".

PART 3470—[AMENDED]

§ 3473.1-2 [Amended]

3. Section 3473.1-2(a) is amended by:

A. Amending paragraph (1) by removing the last sentence thereof in its entirety; and

B. Amending paragraph (2) by removing the phrase "not covered by paragraph (a)(1) of this section".

PART 3500—[AMENDED]

§ 3503.1-2 [Amended]

4. Section 3503.1-2 (a) is amended by:

A. Amending paragraph (1) by removing the last sentence thereof in its entirety; and

B. Amending paragraph (2) by removing the phrase "not covered by paragraph (a)(1) of this section".

Dated: September 28, 1984.

J. Steven Criles

Acting Assistant Secretary of the Interior.

[FR Doc. 84-26442 Filed 10-4-84; 8:45 am]

Published in 49 F.R. 39329, October 5, 1984 - Effective January 1, 1985

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1821

[Circular No. 2555]

Application Procedures; Changes of Addresses of State Offices

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 1201), Subpart 1821, Part 1820, Group 1800, Subchapter A, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 1821—[AMENDED]

The portion of § 1821.2-1(d) beginning with the heading "State Office and Area of Jurisdiction" and ending after the address and Jurisdiction of the Wyoming State Office, is revised to read as follows:

§ 1821.2-1 [Amended]

* * * * *

State Office and Area of Jurisdiction

Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513—Southern Alaska, plus all mineral leasing.[1]

Fairbanks District Office, No. Post of Ft. Wainwright, P.O. Box 1150, Fairbanks, Alaska 99707—Northern Alaska except for all minerals leasing.[1]

Arizona State Office, 3707 North 7th Street, P.O. Box 16563, Phoenix, Arizona 85011—Arizona.

California State Office, Federal Building, 2800 Cottage Way, Sacramento, California 95825—California.

Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205—Colorado and Kansas.

Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304—Arkansas, Iowa, Louisiana, Minnesota, Missouri and all States east of the Mississippi.

Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706—Idaho.

Montana State Office, Granite Tower, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107—Montana, North Dakota and South Dakota.

Nevada State Office, Federal Building, Rm. 3038, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520—Nevada.

New Mexico State Office, Joseph M. Montoya Federal Building, South Federal Place, P.O. Box 1449, Sante Fe, New Mexico 87501—New Mexico, Oklahoma and Texas.

Oregon State Office, 825 Northeast Multnomah Street, P.O. Box 2965, Portland, Oregon 97208—Oregon and Washington.

Utah State Office, CFS Financial Center, 324 South State Street, Salt Lake City, Utah 84111-2303—Utah.

Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003—Wyoming and Nebraska.

Dated: October 31, 1984.

J. Steven Griles,

Acting Assistant Secretary of the Interior.

[FR Doc. 84-29254 Filed 11-6-84; 8:45 am]

Published in 49 F.R. 44473, November 7, 1984 - Effective November 7, 1984

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1880

[Circular No. 2556]

Financial Assistance, Local Governments; Amendments to Payment in Lieu of Taxes Regulations

Under the authority of 31 U.S.C. 6901–6907, as amended, Part 1880, Group 1880, Subchapter A, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 1880—[AMENDED]

§ 1881.0–3 [Amended]

1. Section 1881.0–3 is amended by removing the phrase "Pub. L. 94–565, 90 Stat. 262, 31 U.S.C. 1601–1607," and replacing it with the phrase ", as amended, 31 U.S.C. 6901–6907,".

§ 1881.0–5 [Amended]

2. Section 1881.0–5(b) is amended by:

A. Amending paragraph (1)(i) by adding after the word "general" the word "local";

B. Amending paragraph (1)(ii) by adding after the word "general", in the two places it appears, the word "local"; and

C. Amending paragraph (2) by adding after the word "general" the word "local".

3. Section 1881.0–5(c)(1) is amended by:

A. Removing from the end of paragraph (vi) the word "or";

B. Removing the period from the end of paragraph (vii) and replacing it with a semicolon and the word "or"; and

C. Adding a new paragraph (viii) to read:

§ 1881.0–5 Definitions.

* * * * *

(c)(1) * * *

(viii) Lands located in the vicinity of Purgatory River Canyon and Pinon Canyon, Colorado, that were acquired by the United States after December 23, 1981, to expand the Fort Carson military installation.

§ 1881.1–2 [Amended]

4. Section 1881.1–2 is amended by:

A. Amending paragraph (a) by adding after the word "general", in the two places it appears, the word "local"; and

B. Adding a new paragraph (f) to read:

§ 1881.1–2 Procedures, Section 1 payments.

* * * * *

(f) If a unit of general local government eligible for payments under this part reorganizes, the authorized officer shall, for the fiscal year in which the reorganization occurred, calculate payments as if the reorganization had not occurred and issue any payments due under this part jointly to all of the newly formed units of general government.

§ 1881.1–3 [Amended]

5. Section 1881.1–3(d) is amended by inserting after the phrase "March 27, 1978,", where it appears the second time, the phrase "and lands acquired in the Tahoe Lake Basin under the Act of December 23, 1980 (Pub. L. 96–586),".

6. A new § 1881.1–5 is added to read:

§ 1881.1–5 Requirement to report enactment of State distribution legislation.

(a) Section 6907 of the Act provides that a single payment may be made to a State for reallocation and redistribution to units of general local government other than the principal provider of services as determined by the Secretary. If the State decides to avail itself of this provision, it shall comply with the following conditions:

(1) The State shall notify the authorized officer that it has enacted legislation that conforms to section 6907 of the Act and within 60 days of its enactment, provide the authorized officer with a copy of the legislation and the name and address of the State office to which payment is to be made.

(2) The State legislation shall conform to the requirements of the Act, particularly section 6907(a).

(b) If the authorized officer finds that a State's legislation complies with the conditions set forth in paragraph (a) of this section, he/she shall notify the State that a single payment will be made to the designated State government office beginning with the Federal fiscal year following the fiscal year in which the conforming legislation was approved by the authorized officer. The authorized officer shall provide the State with appropriate information that identifies the entitlement lands data on which the payments are based.

(c)(1) If a State that has enacted conforming legislation as described in paragraphs (a) and (b) of this section later repeals or amends that legislation, the State shall immediately notify the authorized officer of such change(s), in writing, and shall furnish the authorized officer a copy of the legislation.

(2) If a State's conforming legislation is repealed or if the authorized officer finds from a review of the legislation that it is so altered as a result of amendments that it no longer complies with the conditions stated in paragraph (a) of this section, he/she shall notify the State office designated under paragraph (a)(1) of this section that payment shall be made directly to eligible units of local government. These payments shall begin with the Federal fiscal year in which a copy of the State's legislation repealing or amending the State's conforming legislation is received by the authorized officer. However, if a copy of the State's repealing or amending legislation is received after July 1, payments made directly to eligible units of local government shall not begin until the subsequent Federal fiscal year.

J. Steven Griles,
Acting Assistant Secretary of the Interior.
December 14, 1984.

[FR Doc. 85–664 Filed 1–9–85; 8:45 am]

Published in 50 F.R. 1304, January 10, 1985 - Effective February 11, 1985

#2557

DEPARTMENT OF THE INTERIOR
Bureau of Land Management

43 CFR Part 2880
[Circular No. 2557]

Rights-of-Way Under the Mineral Leasing Act; Procedures for Collection of Reimbursable Costs

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends 43 CFR Part 2880 by providing cost reimbursement procedures that are currently contained in 43 CFR Part 2800 and updates them to provide more adequately for recovery by the United States of the costs of processing and monitoring rights-of-way and temporary use permits granted under authority provided by section 28 of the Mineral Leasing Act of 1920, as amended and supplemented.

EFFECTIVE DATE: February 11, 1985.

ADDRESS: Any suggestions or inquiries should be sent to: Director (330), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:
Theodore G. Bingham, (202) 343–5441;
or
Robert C. Bruce, (202) 343–8735.

SUPPLEMENTARY INFORMATION: The proposed rulemaking amending for the second time the procedures for cost recovery for right-of-way grants and temporary use permits granted under the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.) was published in the Federal Register on June 25, 1984 (49 FR 25972). During the 60-day comment period, 16 comments were received; 8 from businesses engaged in the oil and gas industry, 5 from Federal agencies, 2 from associations and 1 from an attorney. The comments and the action taken on them are discussed below.

Several of the comments questioned the appropriateness of the costs shown in the fee schedule, with some feeling that they were too high, while others felt that they were not sufficient to cover the costs incurred by the United States. As discussed in the preamble to the proposed rulemaking of June 25, 1984, the costs shown in the fee schedules are based on current average costs incurred in processing right-of-way grant and temporary use permit applications and monitoring those grants by various offices of the Bureau of Land Management. Since these costs are average costs, there are instances where the cost of handling specific applications by the various offices may be higher or lower than those shown in the schedule. The use of current average costs to set a fee schedule is a commonly accepted practice in both the private and public sectors. The Department has further determined that this method results in less administrative expense than accounting for and reporting actual costs for each right-of-way activity. Therefore, no change has been made in the fee schedule in the final rulemaking.

Several of the comments expressed concern that the process in the proposed rulemaking for determining the appropriate category would delay completing the processing of a right-of-way grant or temporary use permit application. The comments stated this delay could be expecially lengthy in those instances where an application is submitted through the mail. The concern was that the procedures provided in the proposed rulemaking would require the authorized officer to review an application and to return it if it was found inadequate because of the failure to submit a sufficient fee. This would add time to the processing of an application. After careful review of the procedures in the proposed rulemaking, the final rulemaking changes those procedures to permit the acceptance of an application for the purpose of determining the category and nonrefundable fee. Once this determination is made, the applicant will be notified of the category determination and the amount of the nonrefundable fee. No action will be taken on processing an application until the nonrefundable fee has been submitted in full. The final rulemaking also provides for refunding any overpayment of the nonrefundable fee submitted with an application.

The Bureau of Land Management continues to urge right-of-way applicants to take advantage of the pre-application activity provided in the existing regulations. Experience has shown that this process saves the applicant/holder and the Bureau time and avoids problems. Applicants who find it impossible to participate in face-to-face pre-application activity may find that they can save time and avoid problems by working out questions over the telephone. These direct communications are invaluable in reducing delays that can result from misunderstanding.

A few of the comments again raised the point that in their view the collection of reimbursable costs and an annual rental is a double charge for the use of the lands covered by an application/grant. The Mineral Leasing Act requires the collection of costs incurred by the United States in processing and monitoring a right-of-way grant or temporary use permit and the collection of an annual rental. The proposed and final rulemakings follow the requirements of the Mineral Leasing Act regarding cost recovery and no change has been made in these provisions by the final rulemaking.

A couple of comments suggested that the value of the lands involved in a specific application should be considered when setting the fee schedule. The fee schedule is based upon the costs incurred by the Bureau of Land Management in processing an application and monitoring a grant. Those costs were based on the average costs of actions by Bureau personnel in carrying out their responsibilities. These costs would be the same for a visit, whether to lands of high or low value. Any difference in the return received by the United States on lands of high or low value is in the annual rental received once a grant or permit has been issued.

A few of the comments again raised the point that there was an inadequate explanation of how the fee schedules were derived. The preamble to the proposed rulemaking contained a discussion of the process the Bureau of Land Management used in arriving at its fee schedules. The schedules are based on the Bureau's experience in handling application/grants over the past few years. The data that are the basis of the fee schedules are available for review. The Bureau will continue to collect data as it processes/monitors right-of-way grants and temporary use permits. Those data will be the basis for any future revisions of the fee schedules if that should prove necessary.

One comment pointed out that the proposed rulemaking did not clearly provide that the category for monitoring would be the same as that for application processing. This comment is well taken and the final rulemaking incorporates language clarifying the point that the category for processing and monitoring will be based on a single determination by the authorized officer.

A couple of comments raised the issue that the descriptions of categories V and VI in the proposed rulemaking made it impossible to distinguish between a category V and category VI application. The final rulemaking changes the description of category VI to remove this ambiguity.

A few of the comments expressed concern that there would be a variance in the determination of the categories because of the differences in judgment of the various authorized officers. Even though individuals can reasonably reach

a different conclusion using the same data, the Bureau of Land Management has provided careful instructions in this area through its Manual an other instructions. Further, and applicant who feels that a category determination is inappropriate may use the appeal procedure provided in the regulations for an administrative review of that decision.

A couple of the comments requested that the final rulemaking give the authorized officer greater authority than was provided in the proposed rulemaking to change the category determination once it has been made. The Bureau of Land Management's experience in processing applications and monitoring grants indicates that there is very small probability for a change in the category determination once it has been made and that small probability does not justify the additional time and expense that would be incurred by all concerned in the effort to obtain a change of categories. Both of the rulemakings provide authority to change the category to Category VI when it is determined that an environmental impact statement is required, because of the high cost of preparing such a document.

One comment suggested that the final rulemaking should provide relief for an activity of marginal value where there would be an adverse economic effect from the collection of reimbursable costs. The Mineral Leasing Act provides only limited authority for waiving the collection of reimbursable costs. In addition, waiving such costs for a project would provide an indirect government subsidy from all the taxpayers to that project, giving it an unfair competitive advantage over those projects that are required to pay such costs. This suggestion was not adopted by the final rulemaking.

A couple of comments raised questions about the category determination for a large project that encompasses rights-of-way for various purposes, i.e., roads, pipelines, communications sites, working sites, etc. If an application is filed for a pipeline right-of-way, that application will be processed under the provisions of 43 CFR Part 2880, Rights-of-Way Under the Mineral Leasing Act.

The other activities are considered "related facilities" and may be consolidated into the application for the pipeline right-of-way, with the category determination being based on the entire package. Any needed ancillary temporary use permits may also be consolidated into this right-of-way application. However, there is nothing in the existing regulations or this final rulemaking that would prevent an applicant from filing several applications for the various parts of a large project and having them treated as separate applications. No change has been made in the final rulemaking as a result of this comment.

The final rulemaking adds a new paragraph (d) which contains the language of paragraph (b) of the temporary final rulemaking that was published in the **Federal Register** on August 3, 1984 (49 FR 31208). This language has been added to continue in effect the provisions of that temporary final rulemaking until such time as a decision is made on the permanent adoption of those provisions. The Department of the Interior is continuing its review of the comments on the temporary final rulemaking and a final decision on its implementation will be issued in the near future.

Editorial and grammatical changes as needed have been made by the final rulemaking.

The principal author of this final rulemaking is Sheldon Weil, Division of Right-of-Way, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes made by this final rulemaking will not, when the payments for all right-of-way and temporary use permit applications are considered, substantially increase the payments made by right-of-way applicants/holders for processing and monitoring. The changes made by this final rulemaking make the reimbursement of costs procedures used by the Bureau of Land Management more equitable and will recover for the United States a greater portion of the costs incurred in the processing and monitoring of right-of-way grants and temporary use permits.

The changes made by this final rulemaking will be equally applicable to all entities that make application to the Bureau of Land Management for use of the Federal lands for oil or gas right-of-way grants or temporary use permits for related facilities.

There are no additional information collection requirements in this final rulemaking requiring approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 2880

Administrative practice and procedure, Common carriers, Oil and gas industry, Pipelines, Public lands—rights-of-way.

Under the authority of section 28 of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), Part 2880, Group 2800, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

Dated: December 17, 1984.

J. Steven Griles,

Acting Assistant Secretary of the Interior.

§ 2882.1 [Amended]

1. Section 2882.1(c) is amended by removing the citation "§ 2803.1–1" and replacing it with the citation "§ 2883.1–1".

2. Subpart 2883 is amended by revising § 2883.1–1 to read:

§ 2883.1–1 Cost reimbursement.

(a) (1) An applicant for a right-of-way grant or a temporary use permit shall reimburse the United States for administrative and other costs incurred by the United States in processing the application, including the preparation of reports and statements pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), prior to the United States having incurred such costs. All costs shall be paid before the right-of-way grant or temporary use permit shall be issued under the regulations of this title.

(2) The regulations contained in this subpart do not apply to State or local governments or agencies or instrumentalities thereof where the Federal lands are used for governmental purposes and such lands and resources continue to serve the general public, except as to right-of-way grants or temporary use permits issued to State or local governments or agencies or instrumentalities thereof or a municipal utility or cooperative whose principal source of revenue is derived from charges levied on customers for services rendered that are similar to services rendered by a profit making corporation or business enterprise.

(3) The applicant shall submit with each application a nonrefundable application processing fee in the amount required by a schedule of fees for this purpose contained in paragraph (c) of this section which shall be based on a review of the use of the Federal lands for which the application is made, the resources affected and the complexity and costs to the United States for processing required by an application

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for a right-of-way grant and shall be established according to the following general categories:

(i) *Category I.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which the data necessary to comply with the National Environmental Policy Act are available in the office of the authorized officer; and no field examination of the lands affected by the application is required;

(ii) *Category II.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which the data necessary to comply with the National Environmental Policy Act are available in the office of the authorized officer; and one field examination of the lands affected by the application to verify the existing data is required;

(iii) *Category III.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which the data necessary to comply with the National Environmental Policy Act are available in the office of the authorized officer; and two field examinations of the lands affected by the application to verify the data are required;

(iv) *Category IV.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which some original data are required to be gathered to comply with the National Environmental Policy Act; and two or three field examinations of the lands affected by the application are required;

(v) *Category V.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which original data are required to be gathered to comply with the National Environmental Policy Act and evaluation of these data require formation of an interdisciplinary team; and three or more field examinations of the lands affected by the application are required;

(vi) *Category VI.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which the cost of processing activities will be in excess of $5,000.

(4)(i) The authorized officer may accept an application for the purpose of determining the appropriate category and the nonrefundable application processing fee; however, the authorized officer shall collect the full amount of the nonrefundable application processing fee prior to processing such application. A record of the authorized officer's category determination shall be made and given to the applicant, and the decision is a final decision for purposes of appeal under § 2884.1 of this title. Notwithstanding the pendency of such appeal, an application shall not be processed without payment of the fee determined by the authorized officer, and where such payment is made, the application may be processed and, if proper, the grant or permit issued. The authorized officer shall make any refund directed by the appeal decision. Where the amount of the nonrefundable application processing fee submitted by an applicant exceeds the amount of such fee as determined by the authorized officer, the authorized officer shall refund any excess unless requested in writing by the applicant to apply all or part of any such refund to the grant monitoring fee required by paragraph (b) of this section or to the rental payment for such grant or permit.

(ii) During the processing of an application, the authorized officer may change a category determination to place an application in Category VI at any time that it is determined that the application requires preparation of an environmental impact statement. A record of change in category determination under this paragraph shall be made, and the decision is appealable in the same manner as an original category determination made under paragraph (a)(4)(i) of this section.

(5) (i) An applicant whose application is determined to be in Category VI shall, in addition to the nonrefundable application processing fee, reimburse the United States for the full actual administrative and other costs of processing the application. The nonrefundable application processing fee required under the fee schedule shall be credited toward the total cost reimbursement obligation of such applicant. When such an application is filed, the authorized officer shall estimate the costs expected to be incurred in processing the application, inform the applicant of the estimated amount to be reimbursed and require the applicant to make periodic payments of such estimated reimbursable costs prior to such costs being incurred by the United States.

(ii) If the payments required by paragraph (a)(5)(i) of this section exceed the actual costs to the United States, the authorized officer may adjust the next billing to reflect the overpayment, or make a refund from applicable funds under the authority of 43 U.S.C. 1734. An applicant may not set off or otherwise deduct any debt due to it or any sum claimed to be owed it by the United States without the prior written approval of the authorized officer.

(iii) Prior to issuance of a right-of-way grant or temporary use permit, an applicant subject to paragraph (a)(5)(i) of this section shall pay such additional amounts as are necessary to reimburse the United States for any costs which exceed the payments required by paragraph (a)(5)(i) of this section.

(iv) An applicant subject to paragraph (a)(5)(i) of this section whose application is denied is responsible for costs incurred by the United States in processing the application, and such amounts as have not been paid in accordance with paragraph (a)(5)(i) of this section are due within 30 days of receipt of a bill from the authorized officer giving the amount due.

(v) An applicant subject to paragraph (a)(5)(i) of this section who withdraws an application before a decision is reached is responsible for costs incurred by the United States in processing the application up to the date the authorized officer receives written notice of the withdrawal, and for costs subsequently incurred in terminating the application review process. Such amounts as have not been paid in accordance with paragraph (a)(5)(i) of this section are due within 30 days of receipt of a bill from the authorized officer giving the amount due.

(6) When 2 or more applications for right-of-way grants are filed which the authorized officer determines to be in competition with each other, each applicant shall reimburse the United States as required by paragraph (a)(3) of this section. If reimbursement of actual costs is required under paragraph (a)(5)(i) of this section, each applicant shall be responsible for the costs identifiable with his/her application. Costs that are not readily identifiable with one of the applications, such as costs for portions of an environmental impact statement that relate to all of the applications generally, shall be paid by each of the applicants in equal shares or such other proration as may be agreed to in writing by the applicants and authorized officer prior to the United States incurring such costs.

(7) When, through partnership joint venture or other business arrangement, more than one person partnership, corporation, association or other entity apply together for a right-of-way grant or temporary use permit, each such applicant shall be jointly are severally liable for costs under this section.

(8) When 2 or more noncompeting applications for right-of-way grants are received for what, in the judgment of the authorized officer, is one right-of-way system, all of the applicants shall be jointly and severally liable for costs under this section for the entire system,

subject, however, to the provisions of paragraph (a)(7) of this section.

(b) (1) After issuance of a right-of-way grant or temporary use permit for which a fee was assessed under paragraph (a) of this section, the holder thereof shall, prior to the United States having incurred such costs, reimburse the United States for costs incurred by the United States in monitoring the construction, operation, maintenance and termination of authorized facilities on the right-of-way or permit area, and for protection and rehabilitation of the lands involved. The monitoring cost category shall be the same as that for the application processing category for that project.

(2) The holder shall submit a monitoring cost fee along with the written acceptance of the terms and conditions of the grant or permit pursuant to § 2882.3(1) of this title. The amount of the required fee shall be determined by the schedule of fees described in paragraph (c) of this section. Acceptance of the terms and conditions of the grant or permit shall not be effective unless the required fee is paid.

(3) A holder whose application was determined to be in Category VI for application processing purposes shall reimburse the United States for the actual administrative costs and other costs of monitoring the grant or permit. When such a grant or permit is issued, the authorized officer shall estimate the costs expected to be incurred in monitoring the grant or permit, inform the holder of the estimated amount to be reimbursed and require the holder to make periodic payment of such estimated reimburseable costs prior to such costs being incurred by the United States.

(4) If the payments required by paragraph (b)(3) of this section exceed the actual costs of the United States, the authorized officer may adjust the next billing to reflect the overpayment, or make a refund from applicable funds under the authority of 43 U.S.C. 1734. A holder may not set off or otherwise deduct any debt due to it or any sum claimed to be owed it by the United States without the prior written approval of the authorized officer.

(5) Following termination of a right-of-way grant or temporary use permit, any grantee or permittee that was determined to be in Category VI shall pay such additional amounts as are necessary to reimburse the United States for any costs which exceed the payments required by paragraph (b)(3) of this section.

(c) The schedules of nonrefundable fees are as follows:

(1) For processing an application for a right-of-way and/or temporary use permit:

Category	Fee
I	$125
II	275
III	350
IV	600
V	1,000
VI	[1] 5,000

[1] A minimum of.

(2) For monitoring a right-of-way grant or temporary use permit:

Category	Fee
I	$25
II	50
III	75
IV	150
V	250
VI	([1])

[1] As required.

(d) Reimbursement of costs for application processing and administration of right-of-way grants and temporary use permits pertaining to the Trans-Alaska Pipeline System shall be made by payment of such sums as the Secretary determines to be required to reimburse the Department of the Interior for the actual costs of these services. In processing applications and administering right-of-way grants and temporary use permits relating to the Trans-Alaska Pipeline System, the Department of the Interior shall avoid unnecessary employment of personnel and needless expenditure of funds as determined by the Secretary. Reimbursement of costs shall be made for each quarter ending on the last day of March, June, September and December. On or before the 16th day after the close of each quarter, the authorized officer shall submit to the permittee a written statement of costs incurred during that quarter which are reimbursable.

[FR Doc. 85-665 Filed 1-9-85; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2880

[Circular No. 2557]

Rights-of-Way Under the Mineral Leasing Act; Procedures for Collection of Reimbursable Costs

Under the authority of section 28 of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), Part 2880, Group 2800, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

§ 2882.1 [Amended]

1. Section 2882.1(c) is amended by removing the citation "§ 2803.1–1" and replacing it with the citation "§ 2883.1–1".

2. Subpart 2883 is amended by revising § 2883.1–1 to read:

§ 2883.1–1 Cost reimbursement.

(a) (1) An applicant for a right-of-way grant or a temporary use permit shall reimburse the United States for administrative and other costs incurred by the United States in processing the application, including the preparation of reports and statements pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), prior to the United States having incurred such costs. All costs shall be paid before the right-of-way grant or temporary use permit shall be issued under the regulations of this title.

(2) The regulations contained in this subpart do not apply to State or local governments or agencies or instrumentalities thereof where the Federal lands are used for governmental purposes and such lands and resources continue to serve the general public, except as to right-of-way grants or temporary use permits issued to State or local governments or agencies or instrumentalities thereof or a municipal utility or cooperative whose principal source of revenue is derived from charges levied on customers for services rendered that are similar to services rendered by a profit making corporation or business enterprise.

(3) The applicant shall submit with each application a nonrefundable application processing fee in the amount required by a schedule of fees for this purpose contained in paragraph (c) of this section which shall be based on a review of the use of the Federal lands for which the application is made, the resources affected and the complexity and costs to the United States for processing required by an application for a right-of-way grant and shall be established according to the following general categories:

(i) *Category I.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which the data necessary to comply with the National Environmental Policy Act are available in the office of the authorized officer; and no field examination of the lands affected by the application is required;

(ii) *Category II.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which the data necessary to comply with the National Environmental Policy Act are available in the office of the authorized officer; and one field examination of the lands affected by the application to verify the existing data is required;

(iii) *Category III.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which the data necessary to comply with the National Environmental Policy Act are available in the office of the authorized officer; and two field examinations of the lands affected by the application to verify the data are required;

(iv) *Category IV.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which some original data are required to be gathered to comply with the National Environmental Policy Act; and two or three field examinations of the lands affected by the application are required;

(v) *Category V.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which original data are required to be gathered to comply with the National Environmental Policy Act and evaluation of these data require formation of an interdisciplinary team; and three or more field examinations of the lands affected by the application are required;

(vi) *Category VI.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which the cost of processing activities will be in excess of $5,000.

(4)(i) The authorized officer may accept an application for the purpose of determining the appropriate category and the nonrefundable application processing fee; however, the authorized officer shall collect the full amount of the nonrefundable application processing fee prior to processing such application. A record of the authorized officer's category determination shall be made and given to the applicant, and the decision is a final decision for purposes of appeal under § 2884.1 of this title. Notwithstanding the pendency of such appeal, an application shall not be processed without payment of the fee determined by the authorized officer, and where such payment is made, the application may be processed and, if proper, the grant or permit issued. The authorized officer shall make any refund directed by the appeal decision. Where the amount of the nonrefundable application processing fee submitted by an applicant exceeds the amount of such fee as determined by the authorized officer, the authorized officer shall refund any excess unless requested in writing by the applicant to apply all or part of any such refund to the grant monitoring fee required by paragraph (b) of this section or to the rental payment for such grant or permit.

(ii) During the processing of an application, the authorized officer may change a category determination to place an application in Category VI at any time that it is determined that the application requires preparation of an environmental impact statement. A record of change in category determination under this paragraph shall be made, and the decision is appealable in the same manner as an original category determination made under paragraph (a)(4)(i) of this section.

(5) (i) An applicant whose application is determined to be in Category VI shall, in addition to the nonrefundable application processing fee, reimburse the United States for the full actual administrative and other costs of processing the application. The nonrefundable application processing fee required under the fee schedule shall be credited toward the total cost reimbursement obligation of such applicant. When such an application is filed, the authorized officer shall estimate the costs expected to be incurred in processing the application, inform the applicant of the estimated amount to be reimbursed and require the applicant to make periodic payments of such estimated reimbursable costs prior to such costs being incurred by the United States.

(ii) If the payments required by paragraph (a)(5)(i) of this section exceed the actual costs to the United States, the authorized officer may adjust the next billing to reflect the overpayment, or make a refund from applicable funds under the authority of 43 U.S.C. 1734. An

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applicant may not set off or otherwise deduct any debt due to it or any sum claimed to be owed it by the United States without the prior written approval of the authorized officer.

(iii) Prior to issuance of a right-of-way grant or temporary use permit, an applicant subject to paragraph (a)(5)(i) of this section shall pay such additional amounts as are necessary to reimburse the United States for any costs which exceed the payments required by paragraph (a)(5)(i) of this section.

(iv) An applicant subject to paragraph (a)(5)(i) of this section whose application is denied is responsible for costs incurred by the United States in processing the application, and such amounts as have not been paid in accordance with paragraph (a)(5)(i) of this section are due within 30 days of receipt of a bill from the authorized officer giving the amount due.

(v) An applicant subject to paragraph (a)(5)(i) of this section who withdraws an application before a decision is reached is responsible for costs incurred by the United States in processing the application up to the date the authorized officer receives written notice of the withdrawal, and for costs subsequently incurred in terminating the application review process. Such amounts as have not been paid in accordance with paragraph (a)(5)(i) of this section are due within 30 days of receipt of a bill from the authorized officer giving the amount due.

(6) When 2 or more applications for right-of-way grants are filed which the authorized officer determines to be in competition with each other, each applicant shall reimburse the United States as required by paragraph (a)(3) of this section. If reimbursement of actual costs is required under paragraph (a)(5)(i) of this section, each applicant shall be responsible for the costs identifiable with his/her application. Costs that are not readily identifiable with one of the applications, such as costs for portions of an environmental impact statement that relate to all of the applications generally, shall be paid by each of the applicants in equal shares or such other proration as may be agreed to in writing by the applicants and authorized officer prior to the United States incurring such costs.

(7) When, through partnership joint venture or other business arrangement, more than one person partnership, corporation, association or other entity apply together for a right-of-way grant or temporary use permit, each such applicant shall be jointly are severally liable for costs under this section.

(8) When 2 or more noncompeting applications for right-of-way grants are received for what, in the judgment of the authorized officer, is one right-of-way system, all of the applicants shall be jointly and severally liable for costs under this section for the entire system, subject, however, to the provisions of paragraph (a)(7) of this section.

(b) (1) After issuance of a right-of-way grant or temporary use permit for which a fee was assessed under paragraph (a) of this section, the holder thereof shall, prior to the United States having incurred such costs, reimburse the United States for costs incurred by the United States in monitoring the construction, operation, maintenance and termination of authorized facilities on the right-of-way or permit area, and for protection and rehabilitation of the lands involved. The monitoring cost category shall be the same as that for the application processing category for that project.

(2) The holder shall submit a monitoring cost fee along with the written acceptance of the terms and conditions of the grant or permit pursuant to § 2882.3(1) of this title. The amount of the required fee shall be determined by the schedule of fees described in paragraph (c) of this section. Acceptance of the terms and conditions of the grant or permit shall not be effective unless the required fee is paid.

(3) A holder whose application was determined to be in Category VI for application processing purposes shall reimburse the United States for the actual administrative costs and other costs of monitoring the grant or permit. When such a grant or permit is issued, the authorized officer shall estimate the costs expected to be incurred in monitoring the grant or permit, inform the holder of the estimated amount to be reimbursed and require the holder to make periodic payment of such estimated reimburseable costs prior to such costs being incurred by the United States.

(4) If the payments required by paragraph (b)(3) of this section exceed the actual costs of the United States, the authorized officer may adjust the next billing to reflect the overpayment, or make a refund from applicable funds under the authority of 43 U.S.C. 1734. A holder may not set off or otherwise deduct any debt due to it or any sum claimed to be owed it by the United States without the prior written approval of the authorized officer.

(5) Following termination of a right-of-way grant or temporary use permit, any grantee or permittee that was determined to be in Category VI shall pay such additional amounts as are necessary to reimburse the United States for any costs which exceed the payments required by paragraph (b)(3) of this section.

(c) The schedules of nonrefundable fees are as follows:

(1) For processing an application for a right-of-way and/or temporary use permit:

Category	Fee
I	$125
II	275
III	350
IV	600
V	1,000
VI	[1] 5,000

[1] A minimum of.

(2) For monitoring a right-of-way grant or temporary use permit:

Category	Fee
I	$25
II	50
III	75
IV	150
V	250
VI	([1])

[1] As required.

(d) Reimbursement of costs for application processing and administration of right-of-way grants and temporary use permits pertaining to the Trans-Alaska Pipeline System shall be made by payment of such sums as the Secretary determines to be required to reimburse the Department of the Interior for the actual costs of these services. In processing applications and administering right-of-way grants and temporary use permits relating to the Trans-Alaska Pipeline System, the Department of the Interior shall avoid unnecessary employment of personnel and needless expenditure of funds as determined by the Secretary. Reimbursement of costs shall be made for each quarter ending on the last day of March, June, September and December. On or before the 18th day after the close of each quarter, the authorized officer shall submit to the permittee a written statement of costs incurred during that quarter which are reimbursable.

Dated: December 17, 1984.

J. Steven Griles,

Acting Assistant Secretary of the Interior.

[FR Doc. 85-665 Filed 1-9-85; 8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3110

[Circular No. 2558]

Noncompetitive Leases; Amendment Clarifying Minimum Noncompetitive Lease Size

Under the authority of the Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 760 et seq.), the Act of May 21, 1930 (30 U.S.C. 301–306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701), the Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96–514) and the Attorney General's Opinion of April 2, 1941 (40 Op. Att. Gen. 41), Subpart 3110, Part 3110, Group 3100, Subchapter C of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 3100—[AMENDED]

§ 3110.1-3 [Amended]

1. Section 3110.1–3 is amended by:

A. Amending paragraph (a) by removing the word "section", where it first appears, and replacing it with the phrase "section, whichever is larger," and by adding at the end of the paragraph the sentence "Public domain lease offers in Alaska shall not be made for less than 2,560 acres or 4 full contiguous sections, whichever is larger, where the lands have been surveyed under the rectangular survey system or are within an approved protracted survey, except where the offer or parcel includes all available lands within the subject sections and there are no continguous lands available for lease."; and

B. Adding a new paragraph (d) to read:

* * * * *

(d) The restrictions set forth in paragraph (a) of this section regarding the minimum size of noncompetitive oil and gas lease offers do not apply to the development of parcels for leasing under subpart 3112 of this title.

J. Steven Griles,

Acting Assistant Secretary of the Interior.

[FR Doc. 85–1126 Filed 1–14–85; 8:45 am]

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43 CFR Part 3100

[Circular No. 2559]

Oil and Gas Leasing; Amendment Changing the Collection Process for Mineral Leases

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), the Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025), the Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083–1092), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 3100, Group 3100, Subchapter C, Chapter II of the Code of Federal Regulations is amended as set forth below.

PART 3100—[AMENDED]

§ 3103.2-2 [Amended]

1. Section 3103.2–2 is amended by removing from the last sentence of the introductory paragraph the date "March 31, 1985" and replacing it with the date "December 31, 1985".

Dated: January 18, 1985.

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

[FR Doc. 85–2006 Filed 1–24–85; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8560

[Circular No. 2560]

Designated Wilderness Areas; Procedures for Management

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) and the Wilderness Act of 1964 (16 U.S.C. 1131), Subchapter H, Chapter II, Title 43 of the Code of Federal Regulations, is amended by adding a new Group 8500 (consisting of Part 8560) as set forth below:

PART 8560—WILDERNESS AREAS

Subpart 8560—Management of Designated Wilderness Areas

Sec.
8560.0–1 Purpose.
8560.0–2 Objectives.
8560.0–3 Authority.
8560.0–5 Definitions.
8560.0–6 Policy.
8560.1 Uses and prohibited acts.
8560.1–1 Permits for and restrictions on use.
8560.1–2 Prohibited acts.
8560.2 Special provisions applicable to Alaska (reserved).
8560.3 Administrative and emergency functions.
8560.4 Nonconforming uses.
8560.4–1 Livestock grazing.
8560.4–2 Aircraft and motorboats.
8560.4–3 Access.
8560.4–4 Commercial services.
8560.4–5 Gathering information about resources.
8560.4–6 Mining law administration.
8560.4–7 Mineral leases and permits.
8560.4–8 Water and power resources.
8560.5 Penalties.

Authority: 43 U.S.C. 1701 et seq., 16 U.S.C. 1131 et seq.

Subpart 8560—Management of Designated Wilderness Areas

§ 8560.0–1 Purpose.

The purpose of this part is to provide procedures for the management of public land designated by Congress as part of the National Wilderness Preservation System and administered under provisions of the Wilderness Act of 1964.

§ 8560.0–2 Objective.

The objective of these regulations is management of the public lands designated as part of the National Wilderness Preservation System to preserve and protect their wilderness character, provide for their use and enjoyment by the American people in a manner that will leave them unimpaired for future use and enjoyment as wilderness, and allow for recreational, scenic, scientific, educational, conservation and historical use.

§ 8560.0–3 Authority.

This part is issued under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and the Wilderness Act of 1964 (16 U.S.C. 1131 et seq.).

§ 8560.0–5 Definitions.

As used in this part, the term:

(a) "Adequate access" means the combination of routes and modes of travel to non-Federal inholdings that will, as determined by the authorized officer, serve the reasonable purposes for which the non-Federal lands are held or used, and at the same time, cause impacts of least duration and degree on their wilderness character.

(b) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(c) "Bureau" means the Bureau of Land Management.

(d) "Mechanical transport" means (1) any device for transporting personnel or material with wheels, tracks or skids, or by flotation, for traveling over land, water or snow, and is propelled by a nonliving power source contained or carried on or within the device, or (2) a bicycle or hang-glider.

(e) "Motorized equipment" means any machine activated by a nonliving power source except small battery-powered, handcarried devices such as flashlights, shavers, Geiger counters and cameras.

(f) "Motor vehicle" means any vehicle which is self-propelled or any vehicle which is propelled by electric power obtained from batteries.

(g) "Mining operations" means all functions, work and activities in connection with prospecting, exploration, development, mining or processing of mineral resources and all uses of the land reasonably incident thereto, including roads and other means of access on lands subject to the regulations in this part, regardless of whether said operations take place on or off mining claims.

(h) "Primitive and unconfined recreation" means nonmotorized types of outdoor recreation activities that do not require developed facilities.

(i) "Public lands" means any lands and interests in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management without regard of how the United States acquired ownership.

(j) "Solitude" means the state of being alone or remote from habitation; isolation; also, a lonely, unfrequented, or secluded place.

(k) "Visitor use" means on-site use of the wilderness area for recreation, inspiration, stimulation, solitude, relaxation, education, scientific research, pleasure or satisfaction.

(l) "Wilderness" is defined in the same way as in section 2(c) of the Wilderness Act of 1964, 16 U.S.C. 1131(c).

(m) "Wilderness character or characteristics" are defined in the same way as in section 2(c) of the Wilderness Act of 1964, 16 U.S.C. 1131(c).

§ 8560.0–6 Policy

Wilderness areas shall be managed to promote, perpetuate and, where necessary, restore the wilderness character of the land and its specific values of solitude, physical and mental challenge, scientific study, inspiration, primitive recreation, watersheds and water yield, wildlife habitat, natural plant communities, and similar natural and recreational values.

(a) Natural ecological succession shall be allowed to operate freely to the extent permitted by the Wilderness Act;

(b) Wilderness shall be made available for human use to the optimum extent consistent with the maintenance of wilderness character;

(c) In resolving conflicts in resource use, wilderness values shall be primary to the extent provided by the Wilderness Act or subsequent establishing legislation.

§ 8560.1 Uses and prohibited acts.

§ 8560.1–1 Permits for and restrictions on use.

(a) Unless otherwise designated by the authorized officer, all wilderness areas shall be open to uses consistent with the preservation of their wilderness character and their future use and enjoyment by the American people as wilderness, including, but not limited to, primitive recreation and scientific study. The authorized officer may require permits for any use of particular wilderness areas, including, but not limited to, camping, campfires and

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grazing of recreation livestock, and may issue written orders to close or restrict the use of lands and water surface administered by the Bureau within the boundary of any component of the National Wilderness Preservation System when necessary to carry out the provisions of the Wilderness Act. Each order shall:

(1) Describe the lands, trail or waterway to which the order applies;

(2) Specify the time during which the closure or restriction applies;

(3) State each prohibition that is applied;

(4) Specify the reason for the closure, restriction or prohibition; and

(5) Specify any person exempted from any of the prohibitions contained in the order.

(b) An order to close or to restrict the use of lands and water surface shall be effective upon posting. Posting shall be by:

(1) Placing a copy of the order in each local office of the Bureau having jurisdiction over lands affected by the order, and

(2) Displaying each order near and/or within the affected wilderness area in such reasonable locations and in such a manner as to bring the prohibitions contained in the order to the attention of the public.

(c) The authorized officer may publish in the **Federal Register**, and/or in a newspaper of general circulation in the area of the affected lands, a copy of the order to close or restrict the use of lands or water surface.

(d) Permits may be requested from the Bureau office exercising field-level jurisdiction over the wilderness areas for which use permits are required by the authorized officer.

(e) When a permit for use is required by the authorized officer, applications for recreation uses shall be completed in accordance with the provisions of 43 CFR Part 8372.

§ 8560.1-2 Prohibited acts.

Except as provided in the Wilderness Act or subsequent legislation establishing a particular wilderness area, or as specifically provided for elsewhere in this subpart, and subject to valid existing rights, the following are prohibited in wilderness areas managed by the Bureau:

(a) Commercial enterprises;

(b) Temporary or permanent roads;

(c) Aircraft landing strips, heliports, or helispots;

(d) Use of motorized equipment, motor vehicles, motorboats or other forms of mechanical transport;

(e) Landing of aircraft;

(f) Dropping of materials, supplies or persons from aircraft;

(g) Structures or installations, including motels, summer homes, stores, resorts, organization camps, hunting and fishing lodges, electronic installations, and similar structures and uses;

(h) Cutting of trees;

(i) Violating any order or regulation established by the authorized officer;

(j) Entry into or use of wilderness areas without a permit, where such permits are required by the authorized officer.

§ 8560.2 Special provisions applicable to Alaska (Reserved).

§ 8560.3 Administrative and emergency functions.

To the extent authorized by law, the authorized officer may:

(a) Use, construct or install motorized equipment, mechanical transport, aircraft, aircraft landing strips, heliports, helispots, installations or structures in designated wilderness areas, and prescribe conditions under which such items may be used, transported or installed by other Federal, State or county agencies or their agents, to meet the minimum requirements for protection and administration of the wilderness area and its resources.

(b) Authorize occupancy and use of wilderness areas by officers, employees, agencies or agents of the Federal, State and local governments to carry out the purposes of the Wilderness Act.

(c) Prescribe measures to be taken, as necessary, to control fire, insects and diseases where these threaten human life, property or high value resources within the wilderness area or on adjacent nonwilderness lands.

(d) Prescribe measures which may be used in emergencies involving the health and safety of persons or damage to property, including the conditions for use of motorized equipment, mechanical transport, aircraft, installations and structures.

§ 8560.4 Nonconforming uses.

All uses specifically permitted in wilderness areas by the Wilderness Act and subsequent laws shall be conducted in a manner that will preserve the wilderness character of the land, except as otherwise provided in the Wilderness Act and this Part.

§ 8560.4-1 Livestock grazing.

(a) The grazing of livestock, where such use was established before the date of the establishment of the area as a unit of the National Wilderness Preservation System, shall be permitted to continue under the regulations on the grazing of livestock on public lands in part 4100 of this chapter and in accordance with any special provisions covering grazing use in wilderness areas that the Director may prescribe.

(b) Grazing activities may include the construction, use and maintenance of livestock management improvements and facilities associated with grazing that are in compliance with wilderness area management plans provided for in the Wilderness Management Policy (46 FR 47180, September 24, 1981) approved by the authorized officer.

§ 8560.4-2 Aircraft and motorboats.

The authorized officer may permit the landing of aircraft and use of motorboats at places within any wilderness area where these uses were established before the date the area was designated by Congress as a unit of the National Wilderness Preservation System, and where such uses have continued, subject to such restrictions as he/she finds necessary. The authorized officer may also permit the maintenance of aircraft landing strips, heliports or helispots that existed when the area was designated a unit of the National Wilderness Preservation System.

§ 8560.4-3 Access.

(a) States or persons, and their successors in interest, who own lands completely surrounded by a wilderness area shall be given such rights as may be necessary to assure adequate access to such lands, or the private or State land shall be exchanged for federally owned land of approximately equal value within the same State under authorities available to the Secretary of the Interior.

(b) Persons with valid mining claims or other valid occupancies wholly within wilderness areas shall be permitted access to such surrounded occupancies by means that are consistent with the preservation of such wilderness and that have been or are being customarily used with respect to other such occupancies surrounded by wilderness. Permits issued under 43 CFR Part 2800 or 2880, or plans approved under 43 CFR Subpart 3809 by the authorized officer shall prescribe the routes of travel to and from the occupancies surrounded by wilderness, the mode of travel, and other conditions reasonably necessary to preserve the wilderness areas.

(c) No roads shall be constructed across wilderness areas unless permitted by the authorized officer. Access by routes or modes of travel not available to the general public may, when fully justified, be permitted by written authorization of the authorized officer. The authorization shall prescribe routes and modes of travel which will result in impacts of least duration and degree on wilderness characteristics and, at the same time, serve the reasonable purposes for which the lands are held or used.

§ 8560.4–4 Commercial services.

The authorized officer may permit temporary structures and commercial services such as those provided by packers, outfitters and guides within wilderness areas to the extent he/she finds necessary for activities appropriate for realizing the recreational or other wilderness purposes of the area.

§ 8560.4–5 Gathering information about resources.

(a) Any person desiring to conduct any activity for purposes of gathering information about natural resources in wilderness may do so provided it is carried on in a manner compatible with the preservation of the wilderness environment. Where required by other law or regulation, such person shall obtain the necessary permits or authorizations. The authorized officer in granting such permits or authorizations shall allow such activities, subject to such restrictions as he/she may impose to insure that they are carried on in a manner compatible with the preservation of the wilderness environment. This section shall not apply to mineral prospecting under the mining or mineral leasing laws conducted prior to the date when the mining and mineral leasing laws cease to apply to the respective component of the system. (See § 8560.4–6.)

(b) Any person desiring to use motor vehicles, motorized equipment, mechanized transport, or to land aircraft for mineral prospecting or for gathering information about resources, shall notify the Bureau in writing. No form of overland mechanical transport may be used unless approved in accordance with subparts 2920, 3045, 3209 or 3509 of this title. If a permit is required, it shall provide for the protection of public land resources, including wilderness characteristics, protection of the public and restoration of disturbed areas, and may provide for the posting of performance bonds.

§ 8560.4–6 Mining law administration.

The United States mining laws shall apply to each wilderness area under the jurisdiction of the Bureau for the period specified in the Wilderness Act and subsequent establishing legislation to the same extent they were applicable immediately prior to the designation of the area as part of the National Wilderness Preservation System.

(a) No person shall obtain any right or interest in or to any mineral deposits that may be discovered through prospecting or other information-gathering activity after the date on which the United States mining laws cease to apply to the specific wilderness area.

(b) No mining operations shall be conducted on Bureau-administered wilderness areas without an approved plan of operations where required by subpart 3809 of this chapter.

(c) Holders of valid mining claims established on any Bureau-administered wilderness area before the date such unit was included in the National Wilderness Preservation System shall be accorded the rights provided by the United States mining laws then applicable to the public lands involved.

(d) Any person prospecting or locating a mining claim in a Bureau-administered wilderness area on or after the date the wilderness area was included in the National Wilderness Preservation System, but prior to the date on which the mining laws cease to apply to that area, shall have the rights provided by the United States mining laws, subject to the provisions of the Wilderness Act and subsequent establishing legislation.

(e) All mining claimants shall comply with the reasonable stipulations established by the authorized officer for the protection of resources in accordance with the general purposes of maintaining the National Wilderness Preservation System unimpaired for future use and enjoyment as wilderness and preserving its wilderness character, consistent with the use of the lands for mineral exploration, development, drilling and production, and for transmission lines, water lines, telephone lines or facilities necessary in exploring, drilling, producing, mining and processing operations. Where the use of mechanized transport, aircraft and motorized equipment is essential, these stipulations shall control their use.

(f) As soon as feasible after mining operations cease, but no more than one year thereafter, the operator shall remove all structures, equipment and other facilities and, no more than 6 months thereafter, commence reclamation. Reclamation, including appropriate revegetation, shall be completed within a reasonable time as determined by the authorized officer. Whenever possible and feasible, reclamation shall restore the surface to a contour which appears to be natural, although this may not be the original contour. Where such measures are impractical or impossible, as determined by the authorized officer, reclamation shall provide the maximum achievable slope stability.

(g) The authorized officer may require the posting of a cash or surety bond or other guarantee in such amount as the authorized officer determines to be sufficient to defray the costs of reclamation.

(h) In the development and operation of mining claims, claimants shall, to extent practicable as determined by the authorized officer and consistent with the use of lands for mineral development, prevent erosion, deterioration of the lands, impairment of their wilderness character, and the obstruction, pollution, or siltation of the streams, lakes and springs.

(i) The owner of patented mining claims located after the lands were included in the National Wilderness Preservation System may cut and use as much of the mature timber as is needed in the extraction, removal and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available. The cutting shall comply with sound principles of forest management as set forth in stipulations issued by the authorized officer.

(j) Prior to approving plans of operations under subpart 3809 of this title, or allowing approved operations to continue, a field reconnaissance of the unpatented mining claim shall be conducted by a Bureau of Land Management minerals examiner to determine whether the claim had a physical exposure of mineralization within its boundaries prior to the withdrawal.

(1) If the authorized officer concludes that such exposure exists and the proposed operations, including surface disturbance, would not prevent the continued preservation of the wilderness character of the area as a whole, the plan shall be reviewed under the normal procedures to ensure prevention of unnecessary and undue degradation of the public lands.

(2) If the authorized officer concludes that such exposure exists and the proposed operation would prevent continued preservation of the wilderness character of the area as a whole, a mineral examination of the subject claim shall be conducted. A proposal to perform only the minimum assessment work per mining claim shall in no case be deemed to prevent the preservation of the wilderness character. If the mineral report concludes that the claim is:

(i) Valid, the plan shall be reviewed under the normal procedures to ensure prevention of unnecessary and undue degradation of the public lands; or

(ii) Not valid, the plan of operations shall be denied, or a notice of noncompliance ordering the cessation of operations hall be issued, and contest proceedings shall be initiated to determine the status of the claim definitively.

(3) If the authorized officer concludes that such exposure does not exist, a mineral examination of the subject claim shall be conducted, a mineral examination report prepared, and contest proceedings shall be initiated against the claim, if appropriate.

Neither the adverse conclusions of a mineral examination report, nor the pendency of contest proceedings, shall constitute grounds to disallow a plan of operations to the extent the plan proposes operations that are necessary and due, and are for the purpose of either taking samples and gathering other evidence of claim validity to confirm and corroborate mineral exposures that were physically disclosed and existing on the claim prior to the withdrawal date, or performing the necessary annual assessment work as required by subpart 3851 of this title and 30 U.S.C. 28. The mineral examination requirement of this paragraph shall not cause a suspension of the time limitations governing operating plan approvals contained in § 3809.1–6 of this title. Operations on producing mines shall be allowed to continue pending a final administrative determination of claim validity. After a final administrative decision is rendered by the Department declaring a claim to be null and void, and plans of operations shall be disallowed and all operations shall be discontinued unless and until such decision is reversed or modified as a result of judicial review.

(k) Activities, including prospecting under the United States mining laws, for the purpose of gathering information about minerals in wilderness, shall be allowed, except that any such activity for gathering mineral information after the date on which the United States mining laws cease to apply shall be conducted in a manner compatible with the preservation of the wilderness environment. After such date, mining claims shall not be located in wilderness areas.

§ 8560.4–7 Mineral leases and mineral permits.

(a) No mineral leases shall be issued under the mineral leasing laws in any wilderness area on public lands.

(b) Holders of valid mineral leases established on any Bureau-administered wilderness area before the date such unit was included in the National Wilderness Preservation System shall be accorded the rights granted by the terms and conditions of the specific leases.

(c) Subject to valid existing rights, no person shall obtain any right or interest in or to any mineral deposits that may be discovered in a wilderness area through prospecting or other information-gathering activity after the date on which the laws pertaining to mineral leasing cease to apply to the specific wilderness area.

(d) Permits shall not be issued for the removal of mineral materials commonly known as "common varieties" under the Materials Act of July 31, 1947, as amended and supplemented (30 U.S.C. 601, 604).

§ 8560.4–8 Water and power resources.

Prospecting for water resources and the establishment of new reservoirs, water-conservation works, power projects, transmission lines and other facilities needed in the public interest, and the subsequent maintenance of such facilities, all pursuant to section 4(d)(4)(1) of the Wilderness Act, may be permitted if specifically authorized by the President.

§ 8560.5 Penalties.

(a) Any person who knowingly and willfully violates the regulations in § 8560.1–2 is subject to arrest, conviction and punishment by a fine of not more than $1,000 or imprisonment for not more than 12 months, or both.

(b) At the request of the Secretary of the Interior, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from utilizing public lands in violation of the regulations of this Part.

Dated: February 1, 1985.

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

[FR Doc. 85–4488 Filed 2–22–85; 8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3400, 3410, 3420, 3430, 3450, 3460 and 3470

[Circular No. 2561]

Coal Management—General; Exploration Licenses; Competitive Leasing; Noncompetitive Leases; Management of Existing Leases; Environment; and Coal Management Provisions and Limitations; Final Rulemaking Making Administrative Corrections in Group 3500

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351-359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Multiple Mineral Development Act (30 U.S.C. 521-531), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083-1092) and the Act of October 30, 1978 (92 Stat. 2073-2075), Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as follows.

List of Subjects

43 CFR Part 3400

Coal, Intergovernmental relations, Mines, Public lands—classification, Public lands—mineral resources.

43 CFR Part 3410

Coal, Environmental protection, Mines, Public lands—mineral resources, Surety bonds.

43 CFR Part 3420

Administrative practice and procedure, Coal, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources.

43 CFR Part 3430

Administrative practice and procedure, Coal, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources, Public lands—rights-of-way.

43 CFR Part 3450

Coal, Mines, Public lands—mineral resources, Surety bonds.

43 CFR Part 3460

Coal, Environmental protection, Mines, Public lands—classification, Public lands—mineral resources.

43 CFR Part 3470

Coal, Mineral royalties, Mines, Public lands—mineral resources, Surety bonds.

PART 3400—[AMENDED]

§ 3400.0-5 [Amended]

1. Section 3400.0-5 is amended by:

(a) Amending paragraph (k) by removing the citation "30 CFR 211.2" where it appears and replacing it with the citation "§ 3480.0-5(a)(17) of this title";

(b) Amending paragraph (m) by removing the citation "30 CFR 211.2" where it appears and replacing it with the citation "§ 3480.0-5(a)(18) of this title";

(c) Amending paragraph (v) by removing the citation "30 CFR 211.2" where it appears and replacing it with the citation "§ 3480.0-5(a)(22) of this title";

(d) Amending paragraph (w) by removing the citation "30 CFR 211.2" where it appears and replacing it with the citation "§ 3480.0-5(a)(23) of this title";

(e) Amending paragraph (x) by removing the citation "30 CFR 211.2" where it appears and replacing it with the citation "§ 3480.0-5(a)(24) of this title";

(f) Amending paragraph (z) by removing the citation "30 CFR 211.2" where it appears and replacing it with the citation "§ 3480.0-5(a)(39) of this title";

(g) Amending paragraph (aa) by removing the phrase "District Mining Supervisor, Minerals Management Service" where it appears and replacing it with the phrase "authorized officer"; and

(h) Amending paragraph (hh) by removing the citation "30 CFR 211.2" where it appears and replacing it with the citation "§ 3480.0-5(a)(37) of this title".

PART 3410—[AMENDED]

§ 3410.2-1 [Amended]

2. Section 3410.2-1 is amended by:

(a) Amending paragraph (a)(3) by removing the citation "30 CFR 211.10(a)" where it appears and replacing it with the citation "§ 3482.1(a) of this title"; and

(b) Amending paragraph (c)(1) by removing the phrase "Minerals Management Service and Bureau of Land Management offices" where it appears and replacing it with the phrase "Bureau of Land Management office".

§ 3410.2-2 [Amended]

3. Section 3410.2-2(a) is amended by removing the phrase "in coordination with the Minerals Management Service" where it appears in the first sentence.

§ 3410.3-1 [Amended]

4. Section 3410.3-1 is amended by:

(a) Amending paragraph (c) by removing the phrase "exploration plan approved by Minerals Management Service" where it appears and replacing it with the phrase "approved exploration plan";

(b) Amending paragraph (f) by removing the phrase "Mining Supervisor" where it appears and replacing it with the phrase "authorized officer"; and

(c) Amending paragraph (g)(2) by removing the phrase "Mining Supervisor" where it appears and replacing it with the phrase "authorized officer".

§ 3410.3-3 [Amended]

5. Section 3410.3-3 is amended by removing the phrase "Minerals Management Service (30 CFR Part 211)" where it appears in the first sentence thereof and replacing it with the phrase "Bureau of Land Management (43 CFR Part 3480)" and by removing the phrase "Mining Supervisor" where it appears in

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the second sentence thereof and replacing it with the phrase "authorized officer".

§ 3410.3–4 [Amended]

6. Section 3410.3–4 is amended by:

(a) Amending paragraph (b) by removing the phrase ", after consultation with the Mining Supervisor," where it appears; and

(b) Amending paragraph (c) by removing the phrase ", with the consent of the Mining Supervisor," where it appears.

§ 3410.4 [Amended]

7. Section 3410.4(b) is amended by removing the phrase "Mining Supervisor" from the four places it appears and replacing it with the phrase "authorized officer" and by removing the citation "(30 CFR 211.6, 43 CFR 2.20)" where it appears and replacing it with the citation "(43 CFR 2.20 and 3481.3)".

PART 3420—[AMENDED]

§ 3420.1–2 [Amended]

8. Section 3420.1–2(b) is amended by removing the phrase "Minerals Management Service" where it appears and replacing it with the phrase "authorized officer".

§ 3420.1–4 [Amended]

9. Section 3420.1–4 is amended by:

(a) Amending paragraph (b)(3) by removing the citation "43 CFR Part 1600" where it appears and replacing it with the phrase "this section and 43 CFR Part 1600."; and

(b) Amending paragraph (e)(1) by removing the phrase "Minerals Management Service" in the two places it appears and replacing it with the phrase "Bureau of Land Management".

§ 3420.2 [Amended]

10. Section 3420.2(a)(4)(ii) is amended by removing the phrase "and the Minerals Management Service" where it appears.

§ 3422.1 [Amended]

11. Section 3422.1 is amended by:

(a) Amending paragraph (a) by removing the phrase "Minerals Management Service" where it appears and replacing it with the phrase "Bureau of Land Management"; and

(b) Amending paragraph (b) by removing the phrase "request the Minerals Management Service to submit in writing a" where it appears and replacing it with the phrase "prepare a written".

PART 3430—[AMENDED]

§ 3430.6–3 [Amended]

12. Section 3430.6–3 is amended by removing the citation "30 CFR 211.2." where it appears and replacing it with the citation "§ 3483.1 of this title."

§ 3435.4 [Amended]

13. Section 3435.4(c) is amended by removing the phrase ", 30 CFR Chapter VII, Subchapter D and 30 CFR Part 211, as appropriate." where it appears and replacing it with the phrase "and 30 CFR Chapter VII, Subchapter D, as appropriate."

PART 3450—[AMENDED]

§ 3451.2 [Amended]

14. Section 3451.2(e) is amended by removing the citation "30 CFR Part 211." where it appears and replacing it with the citation "part 3480 of this title."

§ 3452.1–1 [Amended]

15. Section 3452.1–1 is amended by removing the citation "30 CFR Part 211." where it appears and replacing it with the citation "part 3480 of this title."

PART 3460—[AMENDED]

§ 3461.5 [Amended]

16. Section 3461.5(a) is amended by removing the citation "subpart 3410 of this title and under 30 CFR 211.2(a)." where it appears and replacing it with the citation "subpart 3410 and part 3480, both of this title."

§ 3465. [Amended]

17. Section 3465.1(a) is amended by removing the citation "(30 CFR Part 211 and 741)." at the end thereof and replacing it with the citation (43 CFR 3482.1(b) and 30 CFR Part 741)."

§ 3465.2–1 [Amended]

18. Section 3465.2–1 is amended by removing the phrase ", Mining Supervisor, or their authorized representatives," where it appears and replacing it with the phrase ", or his/her authorized representative,".

§ 3465.2–2 [Amended]

19. Section 3465.2–2(a) is amended by removing the phrase ", or to the Mining Supervisor" where it appears and replacing it with the phrase ", or take remedial action".

§ 3465.2–3 [Amended]

20. Section 3465.2–3 is amended by removing the phrase "30 CFR Part 211 or 30 CFR Chapter VII, Subchapter D, or by the Mining Supervisor in accordance with 30 CFR Part 211," where it appears and replacing it with the phrase "Part 3480 of this title or 30 CFR Chapter VII, Subchapter D, or by the authorized officer in accordance with part 3480 of this title,".

PART 3470—[AMENDED]

§ 3472.1–1 [Amended]

21. Section 3472.1–1(e) is amended by removing the phrase "30 CFR Part 211, in commercial quantities as that term is defined in 30 CFR Part 211." where it appears and replacing it with the phrase "§ 3483.4 of this title, in commercial quantities as that term is defined in § 3480.0–5(a)(7) of this title."

§ 3473.3–2 [Amended]

22. Section 3473.3–2 is amended by:

(a) Amending paragraph (a) by removing from subparagraph (3) the phrase "Minerals Management Service" where it appears and replacing it with the phrase "authorized officer" and by removing from subparagraph (4) the citation "30 CFR 211.03." where it appears and replacing it with the citation "§ 3483.4 of this title.";

(b) Amending paragraph (b) by removing the phrase "Mining Supervisor" where it appears and replacing it with the phrase "authorized officer" and by removing the citation "30 CFR Part 211." and replacing it with the citation "§ 3485.2 of this title."; and

(c) Amending paragraph (d) by removing the phrase "Mining Supervisor in accordance with 30 CFR Part 211." where it appears at the end of the paragraph and replacing it with the phrase "authorized officer in accordance with part 3480 of this title."

§ 3473.2 [Amended]

23. Section 3473.2 is amended by removing the phrase "Mining Supervisor." where it appears at the end of paragraphs (c)(1) and (c)(2) and replacing it with the phrase "authorized officer."

§ 3475.5 [Amended]

24. Section 3475.5 is amended by removing from the introductory paragraph the citation "30 CFR Part 211," and replacing it with the citation "part 3480 of this title,".

§ 3475.6 [Amended]

25. Section 3475.6(a) is amended by removing the phrase "by the Minerals Management Service in accordance with 30 CFR 211.80." and replacing it with the phrase "in accordance with § 3487.1 of this title."

J. Steven Griles,
Deputy Assistant Secretary of the Interior.

February 28, 1985.

[FR Doc. 85–5173 Filed 3–1–85; 8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2650

[Circular No. 2562]

Alaska Native Selections; Amendment Changing the Chargeability of Submerged Lands

Under the authority of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.), Part 2650, Group 2600, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

List of Subjects in 43 CFR Part 2650

Administrative practice and procedure, Airports, Alaska, Cemeteries, Historic places, Indians—claims, Indians—lands, National forest, National Wildlife Refuge System, Public lands—grants, Public lands—mineral resources.

PART 2650—[AMENDED]

1. Section 2650.0–5 is amended by adding a new paragraph (v) to read:

§ 2650.0–5 Definitions.

* * * * *

(v) "Native corporation" means any Regional Corporation, any Village Corporation, Urban Corporation and any Native Group.

2. Section 2650.5–1 is amended by revising paragraph (b) to read:

§ 2650.5–1 General.

* * * * *

(b) The following procedures shall be used to determine what acreage is not to be charged against Native entitlement:

(1) For any approved plat of survey where meanderable water bodies were not segregated from the survey but were included in the calculation of acreage to be charged against the Native corporation's land entitlement, the chargeable acreage shall, at no cost to the Native corporation, be recalculated to conform to the principles contained in the Bureau of Land Management's *Manual of Surveying Instructions*, 1973, except as modified by this part. Pursuant to such principles, the acreage of meanderable water bodies, as modified by this part, shall not be included in the acreage charged against the Native corporation's land entitlement.

(2) For any plat of survey approved after December 5, 1983, water bodies shall be meandered and segregated from the survey in accordance with the principles contained in the Bureau of Land Management's *Manual of Surveying Instructions*, 1973, as modified by this part, as the basis for determining acreage chargeability.

(3) If title to lands beneath navigable waters, as defined in the Submerged Lands Act, of a lake less than 50 acres in size or a river or stream less than 3 chains in width did not vest in the State on the date of Statehood, such lake, river or stream shall not be meandered and shall be charged against the Native corporation's entitlement.

(4) Any determinations of meanders which may be made pursuant to this subparagraph shall not require monumentation on the ground unless specifically required by law or for good cause in the public interest.

3. Section 2651.4(b) is amended by removing from the second sentence thereof the phrase "or a section in which a body of water comprises more than one-half of the total acreage of a section."

Leona A. Power,
Acting Assistant Secretary of the Interior.

April 10, 1985.

[FR Doc. 85–9560 Filed 4–18–85; 8:45 am]

Published in 50 F.R. 15546, April 19, 1985 - Effective May 20, 1985

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2550 and 2910

[Circular No. 2563]

Mining Claim Occupancy Act and Leases; Removal of Provisions Covering the Mining Claim Occupancy Act

Under the authority of the Mining Claim Occupancy Act, as amended (30 U.S.C. 701–709), Parts 2550 and 2910, Group 2000, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 2550—[REMOVED]

1. Part 2550 is removed in its entirety.

PART 2910—[AMENDED]

§§ 2914.0–3—2914.0–7 [Removed]

2. Part 2910 is amended by removing Subpart 2914 (§§ 2914.0–3—2914.0–7) in its entirety.

J. Steven Griles,
Deputy Assistant Secretary of the Interior.

April 17, 1985.

[FR Doc. 85–9831 Filed 4–23–85; 8:45 am]

Published in 50 F.R. 16083, April 24, 1985 - Effective May 24, 1985

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 5470

(Circular No. 2564)

Forest Management; Modification of Federal Timber Contracts

Under the authority of the Federal Timber Contract Payment Modification Act of October 16, 1984 (Pub. L. 98-498), Group 5400, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

1. The "Note" that appears after the title to Group 5400 is amended by removing the phrase "and 1004-0113" and replacing it with the phrase ", 1004-0113 and 1004-0152."

PART 5470—[AMENDED]

2. Part 5470 is amended by adding a new Subpart 5475 to read:

Subpart 5475—Federal Timber Contract Payment Modification

Sec.
5475.0-3 Authority.
5475.0-5 Definitions.
5475.1 Contract modification applications.
5475.2 Qualifications and volume entitlement.
5475.2-1 Qualification.
5475.2-2 Volume entitlement.
5475.2-3 Volume exceptions.
5475.3 Determination of buy-out charge.
5475.4 Conditions for return of timber sale contracts.
5475.5 Alternative method of payment.
5475.6 Payment date.
5475.7 Protests and appeals.

Authority: Federal Timber Contract Payment Modification Act of October 16, 1984 (98 Stat. 2213; 16 U.S.C. 618).

Subpart 5475—Federal Timber Contract Payment Modification

§ 5475.0-3 Authority.

The Federal Timber Contract Payment Modification Act of October 16, 1984, (98 Stat. 2213) authorizes and directs the Secretary of the Interior to permit a requesting purchaser to return to the Government a volume of the purchaser's qualifying timber contracts upon payment or arrangement for payment of a buy-out charge.

§ 5475.0-5 Definitions.

As used in this subpart, the term:

(a) "Act" means the Federal Timber Contract Payment Modification Act of October 16, 1984 (98 Stat. 2213).

(b) "Purchaser" means a holder of a contract to purchase timber from the Secretary of the Interior. When used for purposes of determining volume entitlement and buy-out charges in §§ 5475.2-2 and 5475.3 of this subpart, respectively, the term purchaser includes affiliated concerns as a single entity.

(c) "Purchaser's loss" means current delivered log cost minus current delivered log value, as of October 16, 1984, all as determined by the authorized officer.

(d) "Net book worth" means the excess of the assets of a purchaser over the liabilities. Net book worth for purchasers or their affiliates which are publicly held corporations shall be as of the date of their most recent annual report filed prior to publication of this rule on Form 10-K with the Securities and Exchange Commission. Net book worth for purchasers or their affiliates which are not publicly held corporations shall be as of the purchaser's or affiliate's financial statement for the most recent fiscal year prior to publication of this final rulemaking and be of a date of no more than 15 months prior to the date of purchaser's application for contract buy-out. Net book worth shall not include the value of any outstanding federal timber sale contracts.

(e) "Independent certified public accountant" means an individual authorized by a government agency (generally a state agency) to render an opinion on the propriety of financial statements. Such an individual may practice as a sole practitioner or as a member of a firm of certified public accountants.

(f) "Board feet of net merchantable volume" means the amount of merchantable timber remaining on a sale area based on Bureau 16-foot timber measurement standards.

(g) "Affiliates". Concerns are affiliates of each other when either directly or indirectly, one concern controls or has the power to control the other, or a third party or parties that controls or has the power to control both. In determining whether or not affiliation exists, consideration shall be given to all appropriate factors, including, but not limited to, common ownership, common management, and contractual relationships. Concerns affiliated at any time during the period June 1, 1984, to September 30, 1984, shall be considered affiliates for determining purchaser's net book worth and volume entitlement. A purchaser forming an affiliate after September 30, 1984, and prior to the time when the purchaser determines its net book worth, shall treat such organization as an affiliate for purposes only of determining its net book worth.

(h) "Qualifying contracts" means Bureau sales contracts bid prior to January 1, 1982, and held as of June 1, 1984.

(i) "Volume entitlement" means the aggregate amount of Bureau and Forest Service net merchantable volume of timber which may be returned to the United States subject to a buy-out charge.

(j) "Conditional contract" means an otherwise qualifying contract that is proposed for buy-out on which harvest and/or road construction activities have commenced.

(k) "Reasonable rates and terms" means interest rates that are within 3 percentage points above the average market yield of outstanding treasury obligations with remaining years to maturity of 5 years as reported by the U.S. Treasury; and having terms of 5 years.

§ 5475.1 Contract modification applications.

(a) The authorized officer shall prepare a modification application package for each Bureau timber sale purchaser, including affiliates holding contracts that qualify for termination under the Act. Application packages for purchasers holding qualifying contracts in more than one State shall be prepared by the authorized officer having the greatest volume under Bureau qualifying contracts for individual purchasers. The authorized officer shall provide timber sale statistics, purchaser loss, and contract overbid information to be included in the modification application. Purchasers who elect to pay less than the maximum buy-out charge as specified in section (3)(A) of the Act, shall submit a net worth determination as part of the completed application package (see § 5475.3(c)). Purchasers that also hold Forest Service contracts that qualify for termination under the Act shall include a complete copy of each Forest Service modification application when submitting a Bureau application to the authorized officer.

(b) In order to be accepted, applications shall be received by the authorized officer within 90 days of the publication date of either this regulation

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or the regulation of the Secretary of Agriculture issued pursuant to the Act, whichever is later. The application may be revised within the 90-day period. After the 90-day period sales cannot be deleted from the application. The addition of qualifying sales may be considered after the 90-day period only when sales are deleted from the purchaser's Forest Service application and the purchaser elects to use additional Bureau sales to obtain full entitlement. Any request to add sales shall be received by the authorized officer no later than 30 days after deletion from the Forest Service application.

(c) If the purchaser has filed for bankruptcy, the application shall be approved by the Bankruptcy Court. Applications containing sale in trust shall have the signature of the assignees.

§ 5475.2 Qualification and volume entitlement.

§ 5475.2-1 Qualification.

To qualify for buy-out under this subpart, a timber sale contract must have been bid prior to January 1, 1982, and be held by the requesting purchaser as of June 1, 1984. In cases where such a contract was defaulted after January 1, 1981, such a contract may qualify for buy-out under this subpart provided: (a) settlement for damages has not been reached between the purchaser and the United States; and (b) the purchaser's loss on all of its qualifying timber sale contracts as determined under § 5475.3(a) of this subpart is in excess of 50 per centum of the net book worth of the purchaser.

§ 5475.2-2 Volume entitlement.

Except as provided in § 5475.2-3 of this subpart:

(a) A purchaser holding qualifying contracts with more than 27.3 million board feet of net merchantable timber shall be entitled to buy out up to 55 per centum of such timber volume up to a maximum of 200 million board feet. The total remaining volume on Bureau and Forest Service timber sale contracts as of January 1, 1982, as set forth in the appropriate agency's qualified timber sale contracts, shall be used to establish buy-out entitlement.

(b) A purchaser holding qualifying contracts with 27.3 million board feet or less of timber qualified under section 5475.2-1 of this subpart is entitled to buy-out up to 15 million board feet or one contract, whichever is greater in volume. The total remaining volume on Bureau and Forest Service timber sale contracts as of January 1, 1982, as set forth in the appropriate agency's qualified timber sale contracts shall be used to establish buy-out entitlement.

§ 5475.2-3 Volume exceptions.

(a) The percentage limitation of § 5475.2-2(a) or the volume limitation of § 5475.2-2(b) of this section may be exceeded by a volume amount not to exceed the volume of the smallest contract bought out by the purchaser, provided the volume limitation of 200 million board feet is not exceeded. This provision shall apply only in cases where the purchaser could not otherwise attain his/her percentage of volume entitlement.

(b) A purchaser may buy down volume of one contract necessary to take full advantage of the 200 million board feet limitation by paying the contract price per thousand board feet or, on a sale where harvest has begun, paying and removing that volume of timber in excess of the 200 million board feet limitation at the contract rate. Removal of additional timber must be consistent with § 5475.4 of this subpart.

§ 5475.3 Determination of buy-out charge.

To determine the buy-out charge for qualifying timber contracts the authorized officer shall first establish the purchaser loss, determine the contract overbid, and obtain from the purchaser a statement of net worth if required under section 3(a) of the Act.

(a) Purchaser loss shall be determined by the authorized officer by subtracting current delivered log value from current delivered log cost on a qualifying contract. Current delivered log value will then be determined by a method which adjusts the original appraised value of each species to October, 1984, values through factors representing value changes in Bureau or Forest Service index sales existing at the time of the original sale and for the month of October, 1984.

(b) Contract overbid shall be established by the authorized officer as follows:

(1) On qualifying contracts where timber has not been removed, the authorized officer will determine the contract overbid by subtracting the total advertised contract price of all species from the total bid price of all species.

(2) On contracts where timber has been removed, the contract overbid for the remaining timber will be determined by the authorized officer by establishing an overbid rate. The overbid rate shall be determined by dividing the contract overbid for the total sale by the total advertised volume.

The overbid rate will be multiplied by the current remaining volume to obtain the contract overbid on the remaining timber.

(c)(1) Purchasers requesting to use net book worth formulas to determine the buy-out charge shall submit: (i) A copy of their most recent consolidated financial statements disclosing the net book worth of the purchaser and affiliates; (ii) A schedule of net book worth that combines the consolidated net book worth of the purchaser and affiliates, as provided in paragraph (c)(1)(i) of this section, and excludes the value of any outstanding federal timber sales contracts included in the determination of net book worth and eliminates intercompany transactions and profits or losses. Except as noted in paragraph (c)(2) of this section, an auditor's report prepared by an independent certified public accountant shall accompany the purchaser's and affiliate's financial statements. The auditor's report may be in the form of an auditor's standard report based upon an examination of the financial statements in accordance with generally accepted auditing standards, citing the scope of the audit and expressing an opinion that the financial statements are fairly presented in conformity with general accepted accounting principles applied on a consistent basis. The purchaser may elect to submit an auditor's review report prepared by an independent certified public accountant in accordance with the standards for review established by the American Institute of Certified Public Accountants.

(iii) The purchaser may submit on his own initiative and the authorized officer may request additional explanatory matter to clarify, disclose, or highlight any circumstances that have or may have a material effect on the purchaser's net book worth or to aid in the interpretation of the purchaser's financial statements. The authorized officer's request for additional information shall be restricted to material essential for the verification of the purchaser's net book worth.

(2) Where the purchaser has filed for bankruptcy and can demonstrate to the authorized officer that he/she cannot provide a financial statement as set forth in this section, the purchaser may submit a notarized copy of the documentation of financial statements required by and used in the bankruptcy proceedings to establish the purchaser's net book worth.

(3) The purchaser is required to maintain all financial records used for determining net book for a period of 3 years following submission of the audit report.

(d) In order to calculate the buy-out charge, the authorized officer shall use the net book worth of each purchaser as provided under § 5475.3 of this subpart, and calculate the buy-out charge and the total amount to be paid by the purchaser to the government using the following formulas on a contract-by-contract basis:

(1) When the purchaser loss exceeds 100 per centum of the net book worth of the purchaser, the buy-out cost shall be $10 per one thousand board feet of currently held volume bought out;

(2) When the purchaser loss exceeds 50 per centum up to 100 per centum of the net book worth of the purchaser, the buy-out cost shall be 10 per centum of the contract overbid but at least $10 per one thousand board feet of currently held volume bought out:

(3) When the purchaser loss is 50 per centum or less of the net book worth of the purchaser the buy-out cost shall be:

(i) 15 per centum of the contract overbid for the first 125 million board feet; and

(ii) 20 per centum of the contract overbid for the next 25 million board feet; and

(iii) 25 per centum of the contract overbid for the next 25 million board feet; and

(iv) 30 per centum of the contract overbid for the next 25 million board feet not to exceed 200 million board feet of qualifying volume; and

(v) At least $10 per thousand board feet.

(4) Purchaser shall designate the order of contracts to buy out under (d)(3)(i) through (iv) of this section including contracts that must be split between two categories.

(e) The purchaser shall be billed by the authorized officer and shall make full payments or make arrangement for payment under § 5475.5 of this subpart for buy-outs prior to the acceptance of returned contracts.

(f) Where a purchaser has completed any portion of road construction which may be logically broken out of the timber sale appraisal allowances and where the road construction is acceptable under conditional contracts of this subpart, the authorized officer shall notify the purchaser of the amount of the road allowance which may be credited. In cases where timber has been removed from the sale area, the authorized officer shall reduce the road allowance. The amount of the reduction shall equal the volume of timber removed in thousands of board feet multiplied by the allowance per thousand board feet (Mbf) for road construction in the timber sale appraisal. These road allowances shall be credited against the total buy-out charge. Road allowances in excess of the total buy-out charge shall be credited against timber sales that were extended under Instruction Memorandum No. 83–743 pursuant to the President's program of July 28, 1983. If there is excess road construction allowance remaining after applying the allowance to the purchaser's buy-out charge and to the purchaser's grace period contracts, then the excess allowance may be credited after September 30, 1985, against any timber sale; however, no more than 33⅓ percent of the remaining excess allowance as of September 30, 1985, may be credited during any subsequent fiscal year, except that in any year the amount of excess allowance that may be credited may equal one payment on one timber sale.

§ 5475.4 Conditions for return of timber sale contracts.

(a) Contracts returned pursuant to this subpart which have had no harvesting or road construction work shall be returned in full. The purchaser shall not retain any portion of the timber sale contract.

(b) Contracts returned pursuant to this subpart under which harvest or any type of road work has begun may be returned to the authorized officer subject to his or her authority to reject the contract or to accept it upon compliance with conditions to be established by the authorized officer. The authorized officer may reject a contract if he or she determines that the remaining unharvested portion is substantially unrepresentative of the original sales as a whole in terms of species, logging methods, or other appropriate criteria, and that accepting the return of such contract would not be in the public interest. Other reasons for rejection may include, but are not limited to, such considerations as: (1) amount of value loss due to deterioration in felled timber; (2) impractical remaining harvest unit resulting from purchaser failing to complete an entire logging unit; (3) road construction determined not to be at a logical stopping point.

(c) The authorized officer may accept payment for the amount of volume loss in felled timber in lieu of requiring removal of the felled timber; provided that the remaining felled timber constitutes a practical harvest unit. Payment for volume loss in felled timber shall be based on current market price applied to volume loss as determined by the Bureau. Such payment shall be in addition to payment of the buy-out cost for the volume of timber affected by deterioration.

(d) The authorized officer shall include conditions for acceptance of the returned contract and a schedule for its completion as part of the purchaser's modification application package. Conditionally returned contracts shall not be accepted by the authorized officer until the purchaser has fulfilled all the conditions established in the modification application. If the purchaser does not fulfill these conditions in accordance with the schedule for their completion, the sale shall no longer qualify for buy-out under the Act and shall terminate on the date scheduled for its completion or the date provided in the agreement under the grace period extension program, whichever is later.

§ 5475.5 Alternative method of payment.

If unable to obtain sufficient credit elsewhere, a purchaser may finance the buy-out charge by paying 5 per centum of the buy-out charge at a time specified by the buy-out agreement and paying the remainder in equal quarterly payments over a period not to exceed 5 years. These additional requirements shall apply:

(a) The purchaser shall provide documentation to the authorized officer of inability to obtain private financing at reasonable rates and terms as defined in this subpart, from at least two Federal or state chartered financial Institutions engaged in providing financing to the timber industry and one from the lending institution with which the purchaser usually transacts business.

(b) Upon request, the purchaser shall make available copies of loan papers for loans acquired within six months of the date of publication of the final rules and for loans acquired between the publication date and submittal of the purchaser's buy-out request, which have reasonable interest rates, as defined in § 5475.0–5(k) of this subpart.

(c) The interest rate shall be adjusted with each payment to equal the average market yield of outstanding Treasury obligations with 5 years remaining to maturity. Such information shall be obtained by the authorized officer from the United States Department of the Treasury.

(d) The purchaser shall sign a promissory note agreeing to the terms and conditions of payment.

(e) Payment shall be secured by bond deposited securities or other forms of security acceptable to the authorized officer in an amount sufficient to cover the entire buy-out payment owing on those Bureau contracts. If a bond of corporate surety is used, the payments bond shall provide that, if the purchaser fails to make payments as required by this supbart, the surety shall make payment of the entire balance including any required interest and late payment charges. As each payment is made, the bond may be adjusted downward to an amount equal to the unpaid balance of the buy-out, including any required interest.

(f) The method of payment shall be the same as called for in the original purchase contract unless the amount is over $10,000. For amounts over $10,000 the Bureau may require remittance by wire transfer. The place of payment for other than wire transfer shall be specified in the buy-out agreement.

§ 5475.6 Payment date.

The purchaser shall pay either the total buy-out charge or, on qualifying, the initial installment under § 5475.5 of this subpart by the 60th calendar day after the final date for submitting applications for contract buy-out. If payment is not received by the

authorized officer by the 60th calendar day, the purchaser shall pay late charges on the outstanding billed amount, as prescribed in the Debt Collection Act of 1982 (96 Stat. 1749). Late payment charges shall accrue from the 60th calendar day after the final date for submitting applications for buy-out, or where the alternate payment method is used, shall accrue from the date the payment was due.

§ 5475.7 Protest and appeals.

(a) Any appeal filed prior to the execution of a buy-out agreement shall be in accordance with the provisions of 43 CFR Part 4.

(b) Any dispute relating to an executed buy-out agreement shall be subject to the provisions of the Contract Disputes Act of 1978 (92 Stat. 2383).

J. Steven Griles,
Deputy Assistant Secretary of the Interior.
April 22, 1985.

[FR Doc. 85-15434 Filed 6-26-85; 8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[Circular No. 2565]

Application Procedures; Changes of Addresses of State Offices

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 1201), Subpart 1821, Part 1820, Group 1800, Subchapter A, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 1820—[AMENDED]

1. The authority citation for Part 1820 continues to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

2. The portion of § 1821.2-1(d) beginning with the heading "State Office and Area of Jurisdiction" and ending after the address and Jurisdiction of the Wyoming State Office, is revised to read as follows:

§ 1821.2-1 [Amended]

* * * * *

State Office and Area of Jurisdiction

Alaska State Office, 701, C Street, Box 13, Anchorage, Alaska 99513—Southern Alaska, plus all mineral leasing.[1]

Fairbanks District Office, 1541 Gaffney Road, Fairbanks, Alaska 99703—Northern Alaska except for all minerals leasing.[1]

Arizona State Office, 3707 North 7th Street, Phoenix, Arizona 85014; Mail: P.O. Box Phoenix, Arizona 85011—Arizona

California State Office, Federal Building, 2800 Cottage Way, Sacramento, California 95825—California

Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205—Colorado

Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304—Arkansas, Iowa, Louisiana, Minnesota, Missouri and all States east of the Mississippi

Idaho State Office, 3380 Americana Terrace, Boise, Idaho, 83706—Idaho

Montana State Office, Granite Tower, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107—Montana, North Dakota and South Dakota

Nevada State Office, Federal Building, Room 3123, 300 Booth Street, Reno, Nevada 89509; Mail: P.O. Box 12000, Reno, Nevada 89520—Nevada

New Mexico State Office, Joseph M. Montoya, Federal Building, South Federal Place, P.O. Box 1449, Santa Fe, New Mexico 87504-1449—Kansas, New Mexico, Oklahoma, and Texas

Oregon State Office, 825 Northeast Multnomah Street, P.O. Box 2965, Portland, Oregon 97208—Oregon and Washington

Utah State Office, CFS Financial Center, 324 South State Street, Salt Lake City, Utah 84111-2303—Utah

Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001; Mail: P.O. Box 1828, Cheyenne, Wyoming 82003—Wyoming and Nebraska

* * * * *

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

September 18, 1985.

[FR Doc. 85-22916 Filed 9-24-85; 8:45 am]

Published in 50 F.R. 38811, September 25, 1985 - Effective September 25, 1985

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3200

[Circular No. 2566]

Geothermal Resources Leasing; General Changes in Lease Acreage and Application Fees

Under the authority of the Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025), Part 3200 of Group 3200, Subchapter C, Chapter II of the Code of Federal Regulations is amended as set forth below:

PART 3200—[AMENDED]

1. The authority citation for Part 3200 is revised to read:

Authority: 30 U.S.C. 1001–1025.

§ 3201.2 [Amended]

2. Section 3201.2(a) is amended by removing the figure "20,480" where it appears and replacing it with the figure "51,200".

§ 3205.2 [Amended]

3. Section 3205.2(b) is amended by removing the figure "$50" where it appears and replacing it with the figure "$75".

J. Steven Criles,

Deputy Assistant Secretary of the Interior.

September 4, 1985.

[FR Doc. 85–22915 Filed 9–24–85; 8:45 am]

Published in 50 F.R. 38812, September 25, 1985 - Effective December 26, 1985

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3480

[Circular No. 2567]

Coal Exploration and Mining Operations Rules; Logical Mining Units

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396g), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), Revised Statute 441 (43 U.S.C. 1457), The Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.) and the Freedom of Information Act (5 U.S.C. 552), Part 3480, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 3480—[AMENDED]

1. The authority citation for Part 3480 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396g); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457); the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.) and the Freedom of Information Act (5 U.S.C. 552).

2. Section 3487.1(a) is revised to read:

§ 3487.1 Logical mining units.

(a) An LMU shall become effective only upon approval of the authorized officer. The effective date for an LMU may be established by the authorized officer between the date that the authorized officer receives an application for LMU approval and the date the authorized officer approves the LMU. The effective date of the LMU approval shall be determined by the authorized officer in consultation with the LMU applicant. An LMU may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal deposits, or both, in accordance with paragraph (g) of this section. An LMU may be diminished by creation of other separate Federal leases or LMU's in accordance with paragraph (g) of this section.

* * * * *

Dated: March 27, 1986.

James E. Cason,

Acting Assistant Secretary of the Interior.

[FR Doc. 86–8629 Filed 4–17–86; 8:45 am]

Published in 51 F.R. 13228, April 18, 1986 - Effective November 1, 1985

#2567

[illegible]or facilities that meet the LSC [illegible]on of a residential board and care occupancy and that have more than 16 beds, the State survey agency may apply the State's fire and safety code as specified in paragraph (b)(1)(ii) of this section.

§ 442.509 [Removed]

5. Section 442.509 is removed.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: March 2, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

Approved: April 2, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-8647 Filed 4-17-86; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3480

[Circular No. 2567]

Coal Exploration and Mining [illegible]ations Rules; Logical Mining Units

[illegible]CY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: Section 3487.1(a) of Title 43 of the Code of Federal Regulations sets the general requirements concerning approval of logical mining units for Federal coal. This final rulemaking clarifies the discretionary authority of the Secretary of the Interior in establishing the effective date of approval of a logical mining unit.

EFFECTIVE DATE: November 1, 1985.

ADDRESS: Any inquiries or suggestions should be sent to: Director (660), Bureau of Land Management, Room 3411, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240

FOR FURTHER INFORMATION CONTACT:

Paul W. Politzer, (202) 343-7722;

or

Allen B. Agnew, (202) 343-7753.

SUPPLEMENTARY INFORMATION: An interim final rulemaking concerning approval of logical mining units for Federal coal was published in the **Federal Register** on October 2, 1985, with a 30-day comment period. During [illegible]omment period, two comments [illegible] received, one from an industry [illegible]esentative and one from an industry association. The comments were carefully reviewed and no changes have been made in this final rulemaking as result of the comments.

Section 5 of the Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083-1092) added paragraph 2(d) to the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 202a). This amendment authorizes the Secretary of the Interior, upon determining that the maximum economic recovery of Federal coal will be achieved, to approve the consolidation of Federal coal leases into a logical mining unit. A logical mining unit is an area of lands in which the coal may be developed in an efficient, economic and orderly manner as a unit, with due regard to conservation of the coal and other resources. Federal coal leases issued prior to the enactment of the Federal Coal Leasing Amendments Act can be included in a logical mining unit only if all of the lessees whose coal leases are included in the approved logical mining unit give their approval. In addition, there is a requirement that a public hearing be held prior to the approval of the logical mining unit if requested by a person having a direct interest that is or may be adversely affected by the formation of the logical mining unit. An approved logical mining unit may include one or more Federal coal leases, as well as non-Federal coal; however, all lands in a logical mining unit must be under the effective control of a single operator, must be able to be developed and operated as a single operation and be contiguous. Still another limitation on the approval of a logical mining unit is that no unit can be approved if the total acreage in the unit exceeds 25,000 acres. In addition to these statutory requirements, § 3482.1 (b) and (c) of the existing regulations require the resource recovery and protection plan for a logical mining unit to show that the entire unit's recoverable coal reserves will be mined out within 40 years.

A logical mining unit cannot be approved prior to the completion of the public participation procedures provided for in § 3487.1(a). However, § 3487.1(a) of the existing regulations does not state with certainty the date the logical mining unit is, or may be, made effective. The need for establishing a definitive date when a logical mining unit becomes effective was suggested in the public comments received on the draft *LMU Application and Processing Guidelines*, which was published in the **Federal Register** on April 11, 1985 (50 FR 14303).

Section 2(d) of the Mineral Leasing Act does not prescribe an effective date for a logical mining unit. The Department of the Interior has determined that a logical mining unit may be effective only after receipt by the authorized officer of an application for approval of a logical mining unit. Further, the effective date should not occur until after the date the Bureau of Land Management approves the application. Therefore, the Department of the Interior issued an interim final rulemaking that resolved the effective date issue by allowing the authorized officer to establish the effective date of a logical mining unit which is approved in accordance with the provisions of Subpart 3487 at any time between the date of receipt of the application and the approval date, after consultation with the applicant. If the authorized officer proposes to make the logical mining unit effective on a date earlier than the date of approval of the application, the proposed effective date will be published in the notice of proposed decision and be subject to public comment.

Both of the Comments on the interim final rulemaking supported the concept of the interim final rulemaking, with one supporting it without change. The second comment objected to the latitude given the authorized officer in the interim final rulemaking in establishing the effective date of approval "within the time frame bounded by (1) the date that the authorized officer receives the application, and (2) the date the authorized officer approves the application." This comment went on to express the view that "this time frame would jeopardize the applicant's Section 3 position for those pre-FCLAA leases to be included within an LMU if the authorized officer delays the approval process. Consequently, this delay may defer the effective date of LMU approval to be established after August 4, 1986." It should be noted that the effective date of the "section 3 position" referred to in the comment has been extended to December 31, 1986, by the Act of December 19, 1985 (Pub. L. 99-190). In order to avoid this potential problem, the comment recommended that the effective date of approval of a logical mining unit be established as the date the application is received by the authorized officer upon the condition that the application is subsequently approved.

The interim final rulemaking and this final rulemaking allow flexibility to the authorized officer in establishing the effective date of approval for a logical mining unit. The rulemaking gives the authorized officer authority to consult with a logical mining unit applicant during review of the logical mining unit

application and establish an effective date of approval for a logical mining unit that is acceptable to all parties. The date of approval would be based on the results of the consultation process during the logical mining unit application review process as set forth in the *Guidelines for Implementation of section 2(d) of the Act of February 25, 1920, as amended (30 U.S.C. 202a)* published in the Federal Register on August 29, 1985 (50 FR 35145). During the consultation phase, the logical mining unit applicant may propose a desired effective date to the authorized officer, giving the reasons for wanting that date. In addition, the logical mining unit may be formed for purposes other than satisfying the requirements of "section 3" and in such instances an automatic, retroactive, effective date could be detrimental to a logical mining unit applicant. For these reasons, the final rulemaking has not adopted the recommended change.

The primary authors of this final rulemaking are William C. Stringer and Allen B. Agnew, Division of Solid Mineral Operations, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management and other field and Washington Office personnel, Bureau of Land Management and the staff of the Office of the Solicitor, Department of the Interior.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

In the Determination of Effects dated August 23, 1985, it was determined that the number of cases to which this final rulemaking might apply per year, and the likely economic impact per mine, are certain not to exceed the economic threshold of Executive Order 12291. With respect to impacts on small entities, the final rulemaking could only have the beneficial effect of avoiding unnecessary and inefficient deviations from proper mining practices an operator might otherwise undertake in order to comply, lease-by-lease, with lease production requirements. Thus, there will be a minor cost savings to any operator, large or small, to whom the final rulemaking may apply.

There are no additional information collection requirements contained in this final rulemaking requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 3480

Administrative practice and procedure, Coal, Government contracts, Intergovernment relations, Mineral royalties, Mines, Public lands—mineral resources, Reporting requirements.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396g), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), Revised Statute 441 (43 U.S.C. 1457), The Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.) and the Freedom of Information Act (5 U.S.C. 552), Part 3480, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

Dated: March 27, 1986.

James E. Cason,

Acting Assistant Secretary of the Interior.

PART 3480—[AMENDED]

1. The authority citation for Part 3480 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396g); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457); the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.) and the Freedom of Information Act (5 U.S.C. 552).

2. Section 3487.1(a) is revised to read:

§ 3487.1 Logical mining units.

(a) An LMU shall become effective only upon approval of the authorized officer. The effective date for an LMU may be established by the authorized officer between the date that the authorized officer receives an application for LMU approval and the date the authorized officer approves the LMU. The effective date of the LMU approval shall be determined by the authorized officer in consultation with the LMU applicant. An LMU may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal deposits, or both, in accordance with paragraph (g) of this section. An LMU may be diminished by creation of other separate Federal leases or LMU's in accordance with paragraph (g) of this section.

* * * * *

[FR Doc. 86–8629 Filed 4–17–86; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 86–152]

Delegations of Authority to the Chief, Common Carrier Bureau

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends § 0.291(b) of the Commission's Rules, delegating authority to its Common Carrier Bureau to act on routine requests, filed pursuant to the Freedom of Information Act (FOIA), for inspection of records which may fall within Section 220(f) of the Communications Act.

This action is taken by the Commission to remove any doubt or uncertainty whether its Common Carrier Bureau may act on all routine FOIA requests concerning records in the Bureau's custody.

This action eliminates any need to have the Commission itself act, at least initially, on FOIA requests that present no novel questions of fact, law or policy and which can be resolved under outstanding precedents and guidelines.

EFFECTIVE DATE: April 18, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[Circular No. 2568]

General Management; Change of Area of Jurisdiction and Responsibility in Colorado and New Mexico

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 1201), Subpart 1821, Part 1820, Group 1800, Subchapter A, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

PART 1821—[AMENDED]

The portion of § 1821.2-1(d) beginning with the heading "State Office and Area of Jurisdiction" and ending after the address and jurisdiction of the New Mexico State Office, is revised to read as follows:

§ 1821.2-1 [Amended]

* * * * *

State Office and Area of Jurisdiction

* * * * *

Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205—Colorado.

* * * * *

New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504—New Mexico, Oklahoma, Texas and Kansas.

* * * * *

James E. Cason,

Acting Assistant Secretary of the Interior.

August 30, 1985.

[FR Doc. 85-21152 Filed 9-4-85; 8:45 am]

Published in 50 F.R. 36055, September 5, 1985 - Effective October 1, 1985

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8200

[Circular No. 2569]

Fossil Forest Research Natural Area

Under the provisions of the San Juan Basin Wilderness Protection Act of 1984 (Pub. L. 98–603, 98 Stat. 3155), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), and 18 U.S.C. 641, Part 8200, Subchapter H, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

1. Group 8200 is amended by adding a new Subpart 8224 as follows:

Group 8200—Natural History Resource Management

PART 8200—PROCEDURES

* * * * *

Subpart 8224—Fossil Forest Research Natural Area

Sec.

8224.0–1 Purpose.
8224.0–2 Objectives.
8224.0–3 Authority.
8224.0–5 Definitions.
8224.0–6 Policy.
8224.1 Use of Fossil Forest Research Natural Area.
8224.2 Penalties.

Authority: Sec. 103 of the San Juan Basin Wilderness Protection Act of 1984 (Pub. L. 98–603, 98 Stat. 3155), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), and 18 U.S.C. 641.

* * * * *

Subpart 8224—Fossil Forest Research Natural Area

§ 8224.0–1 Purpose.

The purpose of this subpart is to provide procedures for the management and use of the public lands in the Fossil Forest of New Mexico.

§ 8224.0–2 Objectives.

The objectives are management in accordance with the Federal Land Policy and Management Act of 1976 and for protection of the aesthetic, natural, educational, and scientific research values of the Fossil Forest, including paleontological study, excavation and interpretation projects within the Fossil Forest, until Congress determines otherwise.

§ 8223.0–3 Authority.

This subpart is issued under the authority of the San Juan Basin Wilderness Protection Act of 1984 (Pub. L. 98–603, 98 Stat. 3155), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and 18 U.S.C. 641.

§ 8224.0–5 Definitions.

As used in this subpart, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management designated to perform the duties described in this subpart:

(b) "Fossil" means the remains or trace(s) of an organism or assemblage of organisms which have been preserved by natural processes in the earth's crust. The term does not mean energy minerals, such as coal, oil and gas, oil shale, bitumen, lignite, asphaltum and tar sands, even though they are of biologic origin:

(c) "Fossil Forest" or "Fossil Forest Research Natural Area" means those public lands as described in section 103(a) of the San Juan Basin Wilderness Protection Act of 1984 (Pub. L. 98–603, 98 Stat. 3155).

§ 8224.0–6 Policy.

No activities will be permitted within the Fossil Forest that would significantly disturb the land surface or impair the existing natural, educational, and scientific research values of the area.

§ 8224.1 Use of the Fossil Forest Research Natural Area.

(a) Fossils may be collected, excavated, or removed only under a permit issued under § 2920.2–2 of this title by the Director, New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87504–1419. Permits shall be issued only to institutions and individuals engaged in research, museum, or educational projects that are approved by the authorized officer and that provide for detailed recordation, reporting, care of specimens, and availability of specimens to other scientists and museums.

(b) Petrified wood shall not be collected and removed from the Fossil Forest either for free use as permitted under § 3622.3 of this title or for commercial sale as permitted under § 3610.1.

(c) The Fossil Forest is closed to motorized use, except as permitted by the authorized officer.

(d) Except as otherwise provided in paragraphs (a), (b), and (c) of this section, the provisions of Part 8360 of this title apply to recreational use in the Fossil Forest.

(e) Rights-of-way may be approved only for temporary projects which do not significantly disturb the surface of the land or impair the existing values of the area.

(f) The grazing of livestock where such use was established before October 30, 1984, shall be allowed to continue under the regulations on the grazing of livestock on public lands in Part 4100 of this title, so long as it does not disturb the natural, educational, and scientific research values of the Fossil Forest. Grazing permits or leases may be modified under § 4130.6–3 of this title, if necessary to protect these resources.

(g) The lands in Fossil Forest shall not be sold or exchanged except as authorized by section 105(b) of the San Juan Basin Wilderness Protection Act of 1984 (Pub. L. 98–603, 98 Stat. 3157).

(h) The Fossil Forest is closed to the operation of the mining laws and to disposition under the mineral leasing laws and geothermal leasing laws, as of October 30, 1984, subject to valid existing rights.

(i) Operations on oil and gas leases issued before October 30, 1984, are subject to the applicable provisions of Group 3100 of this title, including those set forth in § 3162.5–1, and such other terms, stipulations, and conditions as the authorized officer deems necessary to avoid significant disturbance of the land surface or impairment of the area's existing natural, educational, and scientific research values, including paleontological study, excavation, and interpretation.

(j) The regulations in 43 CFR Part 7 apply to the management and protection of archaeological resources in Fossil Forest.

(k) The paleontological resources of the Fossil Forest shall not be willfully destroyed, defaced, damaged, vandalized, or otherwise altered.

§ 8224.2 Penalties.

(a) Any person who willfully violates any prohibition under either § 8224.1(b), (c) or (k) of this title shall be subject to a fine not to exceed $1,000 or imprisonment of not to exceed 12 months, or both.

(b) Any person who willfully and without authorization collects or removes palentological resources whose value is greater than $100, for which a permit is required under § 8224.1(a) or (b) of this title, shall be subject to a fine not to exceed $10,000, or imprisonment not to exceed 10 years, or both (18 U.S.C. 641).

J. Steven Griles,
Deputy Assistant Secretary of the Interior.
October 1, 1985.

[FR Doc. 85–24705 Filed 10–16–85; 8:45 am]

Published in 50 F.R. 42122, October 17, 1985 - Effective November 18, 1985

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3430 and 3450

[Circular No. 2570]

Noncompetitive Leases and Management of Existing Leases; Amendment To Remove Cost Recovery Provision for Coal Land Exchanges and To Reinstate a Transfer Approval Requirement

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Multiple Mineral Development Act (30 U.S.C. 521–531), the Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083–1092), the Act of October 30, 1978 (92 Stat. 2073–2075) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) Parts 3430 and 3450, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 3430—[AMENDED]

1. The authority citation for Part 3430 is revised to read:

Authority: 30 U.S.C. 181 et seq.; 30 U.S.C. 351–359; 30 U.S.C. 521–531; 30 U.S.C. 1201 et seq.; and 43 U.S.C. 1701 et seq.

§ 3436.1-2 [Amended]

2. Section 3436.1–2(f) is amended by removing the period at the end thereof and adding the phrase ", if the exchange is completed:"

§ 3436.2-3 [Amended]

3. Section 3436.2–3 is amended by removing paragraph (f) in its entirety.

PART 3450—[AMENDED]

4. The authority citation for Part 3450 is revised to read:

Authority: 30 U.S.C. 181 et seq.; 30 U.S.C. 351–359; 30 U.S.C. 521–531; 30 U.S.C. 1201 et seq.; and 43 U.S.C. 1701 et seq.

§ 3453.3-1 [Amended]

5. Section 3453.3–1(a) is amended by amending paragraph (7) by adding immediately after the citation "§ 3453.2–2(e)" where it appears, the phrase "and (f)".

Dated: October 1, 1985.

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

[FR Doc. 85–24706 Filed 10–16–85; 8:45 am]

Published in 50 F.R. 42022, October 17, 1985 - Effective November 18, 1985

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[Circular No. 2571]

Grazing Administration—Exclusive of Alaska; Amendments

Under the authority of the Department of the Interior Appropriations Act for Fiscal Year 1985 (98 Stat. 1837), Parts 4100, 4130, 4140, and 4170, Group 4100, Subtitle—B, Chapter II of Title 43 of the Code of Federal Regulations are amended as set forth below:

PART 4100—[AMENDED]

1. The note that appears after the title to Group 4100 is amended by inserting the phrase "1004–0047," between the phrases "1004–0041," and "1004–0051,".

2. The authority citation for Part 4100 is revised to read:

Authority: 43 U.S.C. 315, 315a–315r, 1701 *et seq.*, 1181d, unless otherwise noted and 98 Stat. 1837.

3. Section 4100.0–3 is revised by adding a new paragraph (g) to read as follows:

§ 4100.0–3 Authority.

* * * * *

(g) The Department of the Interior Appropriations Act for Fiscal Year 1985 (Pub. L. 98–473, 98 Stat. 1837).

§ 4100.0–5 [Amended]

4. Section 4100.0–5 is amended by adding in appropriate order definitions of the following terms:

" 'Control' means being responsible for and providing care and management of base property and/or livestock."

" 'Subleasing' means the act of a permittee or lessee entering into an agreement that either (1) allows someone other than the permittee or lessee to graze livestock on the public lands without controlling the base property supporting the permit or lease or (2) allows grazing on the public lands by livestock that are not owned or controlled by the permittee or lessee.

5. Section 4130.5 is amended by adding new paragraphs (d) and (e) to read:

§4130.5 Ownership and identification of livestock.

* * * * *

(d) Where a permittee or lessee controls but does not own the livestock which graze on the public lands, the agreement that gives the permittee or lessee control of the livestock shall be filed with the authorized officer.

(e) The brand and other identifying marks on livestock controlled, but not owned, by the permittee or lessee shall be filed with the authorized officer.

6. Section 4140.1 is amended by adding a new paragraph (a)(6) to read as follows:

§ 4140.1 Acts prohibited on public lands.

(a) * * *

(6) Subleasing as defined in this subpart.

7. Section 4170.1–1 is amended by adding a new paragraph (d) to read:

§ 4170.1–1 Penalty for violations.

* * * * *

(d) Any person who is found to have violated the provisions of § 4140.1(a)(6) since October 12, 1984, shall be required to pay to the authorized officer the dollar equivalent value, as determined by the authorized officer, of all compensation received for the sublease which is in excess of the sum of the established grazing fee and the cost incurred by that person for the installation and maintenance of authorized range improvements. If the dollar equivalent value is not received by the authorized officer within 30 days of receipt of the final decision, the grazing permit or lease shall be cancelled. Such payment shall be in addition to any other penalties the authorized officer may impose under § 4170.1–1(a) of this title.

J. Steven Griles,
Assistant Secretary of the Interior.
October 17, 1985.

[FR Doc. 85–26271 Filed 11–1–85; 8:45 am]

Published in 50 F.R. 45824, November 4, 1985 - Effective December 4, 1985

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2780

[Circular No. 2572]

Special Areas; Final Rulemaking Removing Provisions Relating to Lands Within the Choctaw-Chickasaw Nations and Arkansas Drainage Districts

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 2780, Group 2700, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 2780—[AMENDED]

1. The authority citation for Part 2780 is revised to read:

Authority: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

2. Part 2780 is amended by:

§§ 2781.0-3—2781.6 (Subpart 2781) and §§ 2784.0-3—2784.9 (Subpart 2784) [Removed]

a. Removing Subparts 2781 and 2784 in their entirety; and

§§ 2783.0-3—2783.9 (Subpart 2783) [redesignated as § 2781.0-3—2781.9 (Subpart 2781)]

b. Redesignating Subpart 2783, §§ 2783.0-3 through 2783.9, as Subpart 2781, §§ 2781.0-3 through 2781.9.

Dated: November 4, 1985.

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

[FR Doc. 85-26949 Filed 11-12-85; 8:45 am]

Published in 50 F.R. 46770, November 13, 1985 - Effective December 13, 1985

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2740 and 2910

[Circular No. 2573]

Recreation and Public Purposes Act Conveyances; Amendments Regulations

Under the authority of the Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.) (commonly known as the Recreation and Public Purposes Act), sections 211 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721, 1740) and the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701), Part 2740 of Group 2700 and Part 2910 of Group 2900, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations are amended as set out below.

PART 2740—RECREATION AND PUBLIC PURPOSES ACT—[AMENDED]

1. Part 2740 is amended by adding an authority citation to read:

Authority: The Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701).

Subpart 2740—[AMENDED]

2. Subpart 2740 is amended by:

A. Removing the authority citation in its entirety;

B. Amending section 2740.0–5 by adding new paragraphs (d) and (e) to read:

§ 2740.0–5 Definitions.

* * * * *

(d) "Public purpose" means for the purpose of providing facilities or services for the benefit of the public in connection with, but not limited to, public health, safety or welfare. Use of lands or facilities for habitation, cultivation, trade or manufacturing is permissible only when necessary for and integral to, i.e., and essential part of, the public purpose.

(e) "Conveyance" means a transfer of legal title. Leases issued pursuant to subpart 2912 of this title are not conveyances.

C. Section 2740.0–6 is amended by adding new paragraphs (c), (d), (e) and (f) to read:

§ 2740.0–6 Policy.

* * * * *

(c) Where lands are conveyed under the act with a reservation of the mineral estate to the United States, the Bureau of Land Management shall not thereafter convey that mineral estate to the surface owner under the provisions of section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).

(d) Lease or conveyance of lands for purposes other than recreational or public purposes is not authorized by the act. Uses which can be more appropriately authorized under other existing authorities shall not be authorized under the act. Approval of leases or conveyances under the act shall not be made unless the public lands shall be used for an established or definitely proposed project. A commitment by lessee(s) or conveyee(s) to a plan of physical development, management and use of the lands shall be required before a lease or conveyance is approved. Use of public lands for nonrecreational or nonpublic purposes, whether by lease or conveyance, may be applied for under sections 203 and 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713, 1732) or other applicable authorities.

(e) The Bureau of Land Management shall not exercise the exchange authority of section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) for the purpose of acquiring lands for later conveyance under the act.

(f) The Bureau of Land Management shall not use Federal funds to undertake determinations of the validity of mining claims on public lands for the sole purpose of clearing title so that the lands may be leased or conveyed under the act.

Subpart 2741—[Amended]

3. Subpart 2741 is amended by:

A. Removing the authority citation in its entirety;

B. Redesignating §§ 2741.3 through 2741.8 as §§ 2741.4 through 2741.9, respectively;

C. Adding a new § 2741.3 to read:

§ 2741.3 Preapplication consultation.

(a) Potential applicants should contact the appropriate District Office of the Bureau of Land Management well in advance of the anticipated submission of an application. Early consultation is needed to familiarize a potential applicant with management responsibilities and terms and conditions which may be required in a lease or patent.

(b) Any information furnished by the applicant in connection with preapplication activity or use, which he/she requests not be disclosed, shall be protected to the extent consistent with the Freedom of Information Act (5 U.S.C. 552).

(c) Dependent upon the magnitude and/or public interest associated with the proposed use, various investigations, studies, analyses, public meetings and negotiations may be required of the applicant prior to the submission of the application. Where a determination is made that studies and analyses are required, the authorized officer shall inform the potential applicant of these requirements.

(d) The potential applicant may be permitted to go upon the public lands to perform casual acts related to data collection necessary for development of an acceptable plan of development as required in § 2741.4(b) of this title. These casual acts include, but are not limited to:

(1) vehicle use on existing roads;

(2) sampling;

(3) surveys required for siting of structures or other improvements; and

(4) other activities which do not unduly disturb surface resources. If,

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however, the authorized officer determines that appreciable impacts to surface resources may occur, he/she may require the potential applicant to obtain a land use authorization permit with appropriate terms and conditions under the provision of Part 2920 of this title.

D. Amending the redesignated § 2741.4 by adding a new paragraph (c) to read:

§ 2741.4 Applications.

* * * * *

(c) Each application shall be accompanied by a nonrefundable filing fee of $100. The filing fee shall be required for new applications as well as for applications for change of use or transfer of title filed under § 2741.6 of this title.

E. Amending the redesignated § 2741.5 by:

1. Amending paragraph (f) by removing all after the first sentence thereof; and

2. Revising paragraphs (h) and (i) to read:

§ 2741.5 Guidelines for conveyances and leases under the act.

* * * * *

(h)(1) A notice of realty action which shall serve as a classification of public lands as suitable or unsuitable for conveyance or lease under the act shall be issued, published and sent to parties of interest by the authorized officer not less than 60 days prior to the proposed effective date of the classification action. Notices specifying public lands classified as suitable shall include: the use proposed; whether the lands are to be conveyed or leased; and the terms, covenants, conditions and reservations which shall be included in the conveyance or lease document. The notice shall provide at least 45 days from the date of issuance for submission of public comments.

(2) If the notice of realty action states that the lands are classified as suitable for conveyance or lease under the act, it shall segregate the public lands described in the notice from appropriation under any other public land law, including locations under the mining laws, except as provided in the notice or any amendments or revisions to the notice. If, after 18 months following the issuance of the notice, an application has not been filed for the purpose for which the public lands have been classified, the segregative effect of the classification shall automatically expire and the public lands classified in the notice shall return to their former status without further action by the authorized officer.

(3) The notice of realty action shall be published once in the **Federal Register** and once a week for 3 weeks thereafter in a newspaper of general circulation in the vicinity of the public lands covered by the notice.

(4) The notice published under § 1610.5–5 of this title, if designated in the notice, shall serve as the notice of realty action required by this section and shall segregate the public lands as stated in the notice. Any such notice given under § 1610.5–5 of this title shall be published and distributed under the provisions of this section.

(i) The authorized officer may effect a conveyance for a sanitary landfill on public lands if the ultimate use of the public lands after completion of landfill activities shall be for a recreational or public purpose.

* * * * *

F. Amending the redesignated § 2741.6 by amending paragraph (a) thereof by removing the citation "§ 2741.3" and replacing it with the citation "§ 2741.4", by amending paragraph (b) thereof by removing the citation "§ 2741.6(a)" and replacing it with the citation "§ 2741.7(a)" and amending paragraph (c) thereof by removing the citation "§ 2741.7" and replacing it with the citation "§ 2741.8".

G. Amending the redesignated § 2741.7 by adding to paragraph (d) a sentence to read "Where such reserved minerals are subject to disposition under the provisions of the Mineral Leasing Act of 1920, as amended, and supplemented (30 U.S.C. 181 et seq.), the Materials Act of July 31, 1947, as amended (30 U.S.C. 601 et seq.) and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.), the regulations contained in Subchapter C of this title shall be utilized."

Subpart 2742—[Amended]

4. Subpart 2742 is amended by:

A. Removing the authority citation in its entirety;

B. Redesignating §§ 2742.1 through 2742.4 as §§ 2742.2 through 2742.5, respectively;

C. Adding a new § 2742.1 to read:

§ 2742.1 Lands subject to disposition.

Omitted lands and unsurveyed islands may be conveyed to States and their local political subdivisions under the provisions of section 211 of the Federal Land Policy and Management Act (43 U.S.C. 1721).

PART 2910—LEASES

Subpart 2912—[Amended]

5. Subpart 2912 is amended by:

A. Continuing the authority citation to read:

Authority: Secs. 211 and 310, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721 and 1740).

§§ 2912.4, 2912.4–1 and 2912.4–2 [Removed]

B. Removing §§ 2912.4, 2912.4–1 and 2912.4–2 in their entirety.

Dated: November 6, 1985.

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

[FR Doc. 85–29292 Filed 12–9–85; 8:45 am]

#2573

(2) The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, and such agencies as he/she shall designate.

Dated: November 21, 1985.

Approved:

Robert K. Dawson,

Acting Assistant Secretary of the Army (Civil Works).

[FR Doc. 85-29189 Filed 12-9-85; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2740 and 2910

[Circular No. 2573]

Recreation and Public Purposes Act Conveyances; Amendments Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: The Recreation and Public Purposes Act, as amended, provides the major avenue through which public lands are transferred, by conveyance or lease, to the States or their political subdivisions and to nonprofit corporations and associations. The Act provides procedures for the transfer of public lands for recreational and public purpose uses. This final rulemaking makes a number of amendments in the existing regulations to facilitate acquisitions of public lands by States, State instrumentalities and subdivisions, including counties and municipalities for recreational or public purpose uses. The final rulemaking does not affect the procedures as they relate to nonprofit corporations or associations.

EFFECTIVE DATE: January 9, 1986.

ADDRESS: Suggestions or inquiries should be sent to: Director (320), Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Robert C. Nauert, (202) 343-8693; or Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published in the **Federal Register** on September 28, 1982 (47 FR 42684), with a 60-day comment period. Comments were received from ten different sources, six from Federal agencies, three from States and one from an environmental group.

The general comments on the proposed rulemaking expressed the view that the proposed rulemaking would make a number of improvements in the existing regulations and would facilitate speedier action on applications for public lands for recreational and public use purposes under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.).

The majority of the comments on the proposed rulemaking were directed at specific provisions. Those sections that received comments and the comments on them will be discussed individually.

The new definition of the term "public purpose" set out in the proposed rulemaking drew numerous comments. Most of the comments objected to the inclusion of the word "morals" in the definition. Most of the comments expressed the view that the inclusion of the word "morals" raised the implication that the Federal Government intended to regulate the morals of the public. The word was included in the regulations, not for the purpose of regulating the public's morals, but to cover such public purposes as use of public lands for police and public safety facilities, etc. Because the word is not really necessary to the definition and the uses for police and public safety facilities are clarified in the totally revised term "public purposes" in the final rulemaking, the word "morals" is no longer used.

Several comments raised the point that the term "conveyance" appeared several times in existing regulations and in the proposed rulemaking and that it was used in a way that made its meaning subject to some confusion. The comments questioned what constituted a conveyance, was it a sale or was it also a lease. Another comment made the point that transfers for recreation purposes that were made at no monetary consideration were not sales but were some other form of conveyance. The suggestions made in the comments were given careful consideration and the final rulemaking contains a new definition of the term "conveyance." In addition, the final rulemaking deletes from the proposed rulemaking the word "sale" and substitutes for it the word conveyance for clarification.

Several comments expressed the view that the changes in the policy section made by the proposed rulemaking were not clear as to the types of uses that were not permitted by the Recreation and Public Purposes Act and those uses that were more appropriately authorized under other authorities. The paragraph of the policy section covering uses has been rewritten by the final rulemaking to clarify the types of uses that are not permissible under the Act. This paragraph in the final rulemaking also requires that uses requiring development of the public lands for recreational or public purposes will require the conveyee to commit to a development plan or program before the lease or conveyance is granted.

Other comments on the policy section of the proposed rulemaking stated that the paragraph regarding the disposal of lands acquired in an exchange under the Recreation and Public Purposes Act was not clear and recommended that it be clarified. This section of the proposed rulemaking was designed to reiterate the longstanding policy prohibition against acquiring non-Federal lands through the exchange process for the purpose of immediately disposing of those lands under the Act or any other disposal authority. This paragraph has been rewritten in the final rulemaking to clarify that non-Federal lands will not be acquired for disposal under the authority of the Act.

One comment pointed out what was perceived as an inconsistency between the policy prohibition in the proposed rulemaking against the conveyance of Federally-owned and reserved mineral interests under lands conveyed under the Recreation and Public Purposes Act and the amendment to § 2741.6 made by the proposed rulemaking that clarifies the authority to lease those minerals. The policy prohibition against conveyance of the reserved mineral interest under lands conveyed under the Act is designed to avoid the possibility of split estate situations whereby the mineral estate could be conveyed to the surface owner only to have the surface revert to the United States because of a failure of the owner to comply with the terms and conditions of the conveyance document. The amendment made by the proposed rulemaking to § 2741.6 on mineral leasing would reiterate the policy that reserved Federal mineral interests may be permitted or leased under applicable mineral leasing authorities. These reserved Federal mineral interests have been subject to leasing for years and the amendment was intended to specify the various laws that are involved. Careful review of the two amendments fails to reveal any inconsistency and the final rulemaking retains both of them.

Several of the comments questioned the need for inclusion in the proposed rulemaking of the preapplication consultation provision and questioned its enforceability. The section, which has been retained by the final rulemaking, was included to encourage potential applicants to discuss land acquisition proposals with the Bureau of Land Management well in advance of their filing of an application. Early consultation will enable applicants and

the Bureau to discuss requirements, schedules and processing procedures which will allow both parties to identify problem areas, procedural constraints and methods to expedite action on the proposal. While preapplication consultation is optional and cannot be required of an applicant, it is recommended in order to save time and make the processing of the proposal more efficient. Inclusion of this section simply formalizes preapplication consultation procedures that have been used by the Bureau for the past few years with excellent results, not only in this area but in several other areas of Bureau activity.

Several comments objected to the imposition of a filing fee by the proposed rulemaking and expressed the view that if a filing fee is to be imposed, a fee of $100 is excessive. The Bureau of Land Management has imposed filing fees for a myriad of applications over the years with the amount of the fees being nominal and not truly reflective of the Bureau's costs of processing the applications. Section 304 of the Federal Land Policy and Management Act (43 U.S.C. 1734) authorizes the Secretary of the Interior to establish reasonable filing and service fees with respect to the applications relating to the public lands. The $100 filing fee represents a minimum fee for processing applications under the Recreation and Public Purposes Act and does not recover the Bureau's full costs for the processing of the applications. The fee will be imposed for all applications regardless of the purpose of the application (e.g., recreation, pubic purpose) or the type of applicant (e.g., State and local governments, nonprofit associations, etc.). The final rulemaking adopts the $100 filing fee of the proposed rulemaking with an amendment that fully describes the types of applications that will require the fee. The change was made in response to questions raised in the coments.

Several comments suggested revision of the language of the proposed rulemaking concerning the notice of realty action. One comment pointed out that the Recreation and Public Purposes Act contains provisions that if an application is not filed within 18 months of the lands classification (i.e., issuance of the notice), the lands which were so classified are to be restored to the operation of the applicable public land laws. The proposed rulemaking specified a 12-month period of segregation from the effect of the public land laws. The final rulemaking follows the language of the Act and provides for a period of segregation of 18 months.

Several comments suggested that time could be saved by combining the comment periods on a notice of realty action with that for a land use plan in those instances where a classification decision, in order to be implemented, would require an amendment to the Bureau of Land Management's land use plan. This suggestion has been adopted by the final rulemaking.

The proposed rulemaking contained a new policy directive which would permit immediate patents for using lands for sanitary landfill activities. This policy change was applauded by most of the comments. However, the comments expressed the view that the language of the proposed rulemaking was confusing and lacked clarity. After careful review of the provisions of the proposed rulemaking, this section has been rewritten in the final rulemaking. As a result of the fact that immediate patents may now be issued for lands to be used for sanitray landfill purposes, the lease with option to purchase alternative that appeared in the proposed rulemaking is no longer needed and has been removed by the final rulemaking.

Section 2742.1 of the proposed rulemaking contained a specific section regarding conveyances of omitted lands and unsurveyed islands under the provisions of section 211 of the Federal Land Policy and Management Act (43 U.S.C. 1721). This section has been deleted by the final rulemaking because it repeats language that already appears in §§ 2740.0–3(b), 2740.0–7(c) and 2741.1(c) of the existing regulations.

One comment questioned why §§ 2912.4 through 2912.4–2 of the existing regulations were needed. Those sections contain language explaining the requirements and procedures for leases when the proposed use of the lands under lease is for solid waste disposal. The comment is well taken and the sections are not needed and the final rulemaking deletes them. They are not needed because § 2912.1–1(b) authorizes the authorized officer to include in any lease such terms and conditions as are required by law and public policy. If the proposed use under a lease is for solid waste disposal purposes, the authorized officer would include a reference to applicable law and regulations.

Several comments were received on the provisions of the proposed rulemaking that would permit leasing of lands which included valid mining claims. The major concern raised by the comments was related to the significance of this change in the longstanding policy of the Bureau of Land Management with regard to challenging the validity of mining claims. The comments also expressed concern about the possibility of conflicts arising between a lessee and a mining claimant on lands leased under this provision, as well as concerns about the possibility of damage claims or liability under dual-use situations. The issues raised in these comments have been carefully reviewed. Our review led to the conclusion that some of the concerns were appropriate and that the provisions of the proposed rulemaking, if implemented by the final rulemaking, might result in the types of problems and conflicts noted in the comments. Accordingly, the addition of a new paragraph (h) to § 2912.1–1 proposed by the proposed rulemaking has been deleted by the final rulemaking. The Bureau will continue the existing policy regarding leasing of mining claims that has been in effect for years. This policy requires that public lands included in a mining claim upon which a validity determination has not been made may not be leased or conveyed under the provisions of the Recreation and Public Purposes Act. To further reiterate and clarify this policy, the final rulemaking adds a new paragraph to the general policy section (2740.0–6) describing the policy. The policy statement makes it clear that the Bureau will not spend any of its funds to undertake a validity determination for the sole purpose of conveying property under the provisions of the Recreation and Public Purposes Act. If an applicant for those lands wishes to expend funds to undertake a validity contest of a mining claim, they may make a request for such action of the authorized officer and such contest may proceed if the authorized officer deems it appropriate after considering all of the issues. The applicant will be responsible for the full expense of any contest proceedings.

The principal authors of this final rulemaking are Keith Corrigall and John Mezes, Division of Lands, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility act (5 U.S.C. 601 et seq.).

The changes made by the final rulemaking will expedite the processing of applications for disposal of public lands under the Recreation and Public Purposes Act to governmental and nonprofit entities, both large and small. The effect of the changes will be beneficial to all participants in the

program, but will not increase or decrease the overall benefits of the program.

The information collection requirements contained in this final rulemaking have been cleared by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0009 and 1004–0012.

List of Subjects

43 CFR Part 2740

Intergovernmental relations, Public lands—sales, Recreation.

43 CFR Part 2910

Airports, Alaska, Mines, Public lands, Recreation areas, Waste treatment and disposal.

Under the authority of the Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.) (commonly known as the Recreation and Public Purposes Act), sections 211 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721, 1740) and the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701), Part 2740 of Group 2700 and Part 2910 of Group 2900, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations are amended as set out below.

Dated: November 6, 1985.

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

PART 2740—RECREATION AND PUBLIC PURPOSES ACT—[AMENDED]

1. Part 2740 is amended by adding an authority citation to read:

Authority: The Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701).

Subpart 2740—[AMENDED]

2. Subpart 2740 is amended by:

A. Removing the authority citation in its entirety;

B. Amending section 2740.0–5 by adding new paragraphs (d) and (e) to read:

§ 2740.0–5 Definitions.

* * * * *

(d) "Public purpose" means for the purpose of providing facilities or services for the benefit of the public in connection with, but not limited to, public health, safety or welfare. Use of lands or facilities for habitation, cultivation, trade or manufacturing is permissible only when necessary for and integral to, i.e., and essential part of, the public purpose.

(e) "Conveyance" means a transfer of legal title. Leases issued pursuant to subpart 2912 of this title are not conveyances.

C. Section 2740.0–6 is amended by adding new paragraphs (c), (d), (e) and (f) to read:

§ 2740.0–6 Policy.

* * * * *

(c) Where lands are conveyed under the act with a reservation of the mineral estate to the United States, the Bureau of Land Management shall not thereafter convey that mineral estate to the surface owner under the provisions of section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).

(d) Lease or conveyance of lands for purposes other than recreational or public purposes is not authorized by the act. Uses which can be more appropriately authorized under other existing authorities shall not be authorized under the act. Approval of leases or conveyances under the act shall not be made unless the public lands shall be used for an established or definitely proposed project. A commitment by lessee(s) or conveyee(s) to a plan of physical development, management and use of the lands shall be required before a lease or conveyance is approved. Use of public lands for nonrecreational or nonpublic purposes, whether by lease or conveyance, may be applied for under sections 203 and 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713, 1732) or other applicable authorities.

(e) The Bureau of Land Management shall not exercise the exchange authority of section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) for the purpose of acquiring lands for later conveyance under the act.

(f) The Bureau of Land Management shall not use Federal funds to undertake determinations of the validity of mining claims on public lands for the sole purpose of clearing title so that the lands may be leased or conveyed under the act.

Subpart 2741—[Amended]

3. Subpart 2741 is amended by:

A. Removing the authority citation in its entirety;

B. Redesignating §§ 2741.3 through 2741.8 as §§ 2741.4 through 2741.9, respectively;

C. Adding a new § 2741.3 to read:

§ 2741.3 Preapplication consultation.

(a) Potential applicants should contact the appropriate District Office of the Bureau of Land Management well in advance of the anticipated submission of an application. Early consultation is needed to familiarize a potential applicant with management responsibilities and terms and conditions which may be required in a lease or patent.

(b) Any information furnished by the applicant in connection with preapplication activity or use, which he/she requests not be disclosed, shall be protected to the extent consistent with the Freedom of Information Act (5 U.S.C. 552).

(c) Dependent upon the magnitude and/or public interest associated with the proposed use, various investigations, studies, analyses, public meetings and negotiations may be required of the applicant prior to the submission of the application. Where a determination is made that studies and analyses are required, the authorized officer shall inform the potential applicant of these requirements.

(d) The potential applicant may be permitted to go upon the public lands to perform casual acts related to data collection necessary for development of an acceptable plan of development as required in § 2741.4(b) of this title. These casual acts include, but are not limited to:

(1) vehicle use on existing roads;

(2) sampling;

(3) surveys required for siting of structures or other improvements; and

(4) other activities which do not unduly disturb surface resources. If, however, the authorized officer determines that appreciable impacts to surface resources may occur, he/she may require the potential applicant to obtain a land use authorization permit with appropriate terms and conditions under the provision of Part 2920 of this title.

D. Amending the redesignated § 2741.4 by adding a new paragraph (c) to read:

§ 2741.4 Applications.

* * * * *

(c) Each application shall be accompanied by a nonrefundable filing fee of $100. The filing fee shall be required for new applications as well as for applications for change of use or transfer of title filed under § 2741.6 of this title.

E. Amending the redesignated § 2741.5 by:

1. Amending paragraph (f) by removing all after the first sentence thereof; and

2. Revising paragraphs (h) and (i) to read:

§ 2741.5 Guidelines for conveyances and leases under the act.

* * * * *

(h)(1) A notice of realty action which shall serve as suitable or unsuitable for conveyance or lease under the act shall be issued, published and sent to parties of interest by the authorized officer not less than 60 days prior to the proposed effective date of the classification action. Notices specifying public lands classified as suitable shall include: the use proposed; whether the lands are to be conveyed or leased; and the terms, covenants, conditions and reservations which shall be included in the conveyance or lease document. The notice shall provide at least 45 days from the date of issuance for submission of public comments.

(2) If the notice of realty action states that the lands are classified as suitable for conveyance or lease under the act, it shall segregate the public lands described in the notice from appropriation under any other public land law, including locations under the mining laws, except as provided in the notice or any amendments or revisions to the notice. If, after 18 months following the issuance of the notice, an application has not been filed for the purpose for which the public lands have been classified, the segregative effect of the classification shall automatically expire and the public lands classified in the notice shall return to their former status without further action by the authorized officer.

(3) The notice of realty action shall be published once in the **Federal Register** and once a week for 3 weeks thereafter in a newspaper of general circulation in the vicinity of the public lands covered by the notice.

(4) The notice published under § 1610.5–5 of this title, if designated in the notice, shall serve as the notice of realty action required by this section and shall segregate the public lands as stated in the notice. Any such notice given under § 1610.5–5 of this title shall be published and distributed under the provisions of this section.

(i) The authorized officer may effect a conveyance for a sanitary landfill on public lands if the ultimate use of the public lands after completion of landfill activities shall be for a recreational or public purpose.

* * * * *

F. Amending the redesignated § 2741.6 by amending paragraph (a) thereof by removing the citation "§ 2741.3" and replacing it with the citation "§ 2741.4", by amending paragraph (b) thereof by removing the citation "§ 2741.6(a)" and replacing it with the citation "§ 2741.7(a)" and amending paragraph (c) thereof by removing the citation "§ 2741.7" and replacing it with the citation "§ 2741.8".

G. Amending the redesignated § 2741.7 by adding to paragraph (d) a sentence to read "Where such reserved minerals are subject to disposition under the provisions of the Mineral Leasing Act of 1920, as amended, and supplemented (30 U.S.C. 181 et seq.), the Materials Act of July 31, 1947, as amended (30 U.S.C. 601 et seq.) and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.), the regulations contained in Subchapter C of this title shall be utilized."

Subpart 2742—[Amended]

4. Subpart 2742 is amended by:

A. Removing the authority citation in its entirety;

B. Redesignating §§ 2742.1 through 2742.4 as §§ 2742.2 through 2742.5, respectively;

C. Adding a new § 2742.1 to read:

§ 2742.1 Lands subject to disposition.

Omitted lands and unsurveyed islands may be conveyed to States and their local political subdivisions under the provisions of section 211 of the Federal Land Policy and Management Act (43 U.S.C. 1721).

PART 2910—LEASES

Subpart 2912—[Amended]

5. Subpart 2912 is amended by:

A. Continuing the authority citation to read:

Authority: Secs. 211 and 310, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721 and 1740).

§§ 2912.4, 2912.4–1 and 2912.4–2 [Removed]

B. Removing §§ 2912.4, 2912.4–1 and 2912.4–2 in their entirety.

[FR Doc. 85–29292 Filed 12–9–85; 8:45 am]

BILLING CODE 4310–84–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Developm[illegible]

48 CFR Parts 701, 702, 715, 728, 731, 732, 737, 750, 752, 753, and Appendices

[AIDAR Notice 85–12]

Miscellaneous Changes to the AID Acquisition Regulation

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation is being amended to reflect new office titles required by a reorganization, and to make minor editorial revisions and corrections.

EFFECTIVE DATE: December 10, 1985.

FOR FURTHER INFORMATION CONTACT: M/SER/PPE, Mr. James M. Kelly, telephone (703) 235–9855.

SUPPLEMENTARY INFORMATION: We have determined that the changes being made by this Notice are not significant or major changes as defined by FAR 1.301(b), or FAR 1.501, or E.O. 12291.

As required by the Regulatory Flexibility Act, it is hereby certified t[illegible] this Notice will not have a significan[illegible] economic impact on a substantial number of small entities.

List of Subjects in 48 CFR Parts 701, 702, 715, 728, 731, 732, 737, 750, 752, 753, and Appendices

Government procurement.

For the reasons set out in the preamble, Chapter 7 of Title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citations in Parts 701, 702, 715, 728, 731, 732, 737, 750, 752, 753, and the Appendices to Chapter 7 are unchanged and continue to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

PART 701—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 701.3—Agency for International Development Acquisition Regulation

701.376–1 [Amended]

2. Section 701.376–1, *Responsibility*, is amended by revising the first sente[illegible] to read as follows: "Responsibility [illegible] the development and maintenance of the

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2620 and 2910

[Circular No. 2574]

State Grants and Leases; Removal of Provisions Covering Patents for Granted School Sections and Small Tract Act Lease or Sale

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 2620, Group 2600 and Part 2910, Group 2900, both of Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations are amended as set forth below.

PART 2620—[AMENDED]

1. The authority citation for Part 2620 continues to read:

Authority: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

Subpart 2624—[Removed]

2. Part 2620 is amended by removing Subpart 2624 in its entirety.

PART 2910—[AMENDED]

3. The authority citation for Part 2910 is added to read:

Authority: 49 U.S.C. 211—214; 43 U.S.C. et seq., 48 U.S.C. 360, 361.

Subpart 2913—[Removed]

4. Part 2910 is amended by removing Subpart 2913 in its entirety.

James E. Cason,
Deputy Assistant Secretary of the Interior.
January 16, 1986.

[FR Doc. 86-1908 Filed 1-28-86; 8:45 am]

Published in 51 F.R. 3599, January 29, 1986 - Effective February 28, 1986

Dated: January 15, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.385 is amended by adding and alphabetically inserting the commodity flaxseed, to read as follows:

§ 180.385 Diclofop-methyl; tolerances for residues.

* * * * *

Commodities	Parts per million
Flaxseed	0.1

[FR Doc. 86-1682 Filed 1-28-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2620 and 2910

[Circular No. 2574]

State Grants and Leases; Removal of Provisions Covering Patents for Granted School Sections and Small Tract Act Lease or Sale

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking removes the existing regulations covering Patents for Granted School Sections—43 CFR Subpart 2624 and Small Tract Act—43 CFR Subpart 2913. These regulations are no longer needed because the Federal Land Policy and Management Act of 1976 repealed the Act of June 21, 1934, and the Act of June 1, 1938, as amended by the Act of June 8, 1954. Both of these subparts have been retained to facilitate the handling of applications pending at the time the Acts were repealed.

EFFECTIVE DATE: February 28, 1986.

ADDRESS: Inquiries or suggestions should be sent to: Director (320), Bureau of Land Management, Room 3643, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gary L. Rowe, (202) 343-8693.

SUPPLEMENTARY INFORMATION: This final rulemaking removes from the existing regulations provisions covering patents for grant school sections authorized by the Act of June 21, 1934 (43 U.S.C. 871(a)), contained in 43 CFR Subpart 2624. It also removes from the existing regulations the provisions covering the sale or lease of five acre parcels as authorized by the Act of June 1, 1938 (52 Stat. 609), as amended by the Act of June 8, 1954 (43 U.S.C. 682(a)). These statutes have been repealed by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), but the regulatory provisions have been retained to facilitate the processing of applications that were pending at the time the statutes were repealed. All pending actions have been completed and the regulations are no longer needed. This administrative action removes these regulations from the Code of Federal Regulations. Even though all actions covered by these statutes have been completed, rights granted pursuant to the statutes might still exist. The Bureau of Land Management does not expect any issues to arise under these existing rights requiring consideration under the regulations being removed by this final rulemaking. However, should any questions arise concerning rights previously granted under these regulations, earlier editions of the Code of Federal Regulations will remain available to assist in interpretation.

The principal author of this final rulemaking is Gary L. Rowe, Division of Lands, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

There are no information collection requirements contained in this final rulemaking requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects

43 CFR Part 2620

Alaska, Intergovernmental relations, Public lands—grants, Public lands—mineral resources.

43 CFR Part 2910

Airports, Alaska, Mines, Public lands, Recreation areas, Waste treatment and disposal.

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.). Part 2620, Group 2600 and Part 2910, Group 2900, both of Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations are amended as set forth below.

James E. Cason,

Deputy Assistant Secretary of the Interior.

January 16, 1986.

PART 2620—[AMENDED]

1. The authority citation for Part 2620 continues to read:

Authority: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

Subpart 2624—[Removed]

2. Part 2620 is amended by removing Subpart 2624 in its entirety.

PART 2910—[AMENDED]

3. The authority citation for Part 2910 is added to read:

Authority: 49 U.S.C. 211—214; 43 U.S.C. et seq., 48 U.S.C. 360, 361.

Subpart 2913—[Removed]

4. Part 2910 is amended by removing Subpart 2913 in its entirety.

[FR Doc. 86-1908 Filed 1-28-86; 8:45 am]

BILLING CODE 4310-84-M

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43 CFR Public Land Order 6612

[AR 032636]

Modification of Public Land Order No. 3305; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies a public land order as to 73.647 acres to change the purpose from a Federal Bureau of Investigation training facility to a Federal corrections facility under the Department of Justice's Bureau of Prisons. The land has been and remains closed to surface entry, mining, and mineral leasing.

EFFECTIVE DATE: January 29, 1986.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2800

[Circular No. 2575]

Principles and Procedures for Rights-of-Way Granted Prior to October 21, 1976

Under the authority of section 310 and title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 2800, Group 2800, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 2800—[AMENDED]

1. The authority citation for 43 CFR Part 2800 continues to read:

Authority: 43 U.S.C. 1761–1771.

§ 2800.0–1 [Amended]

2. Section 2800.0–1 is amended by removing the period at the end thereof and adding the phrase "and for the administration, assignment, monitoring and termination of right-of-way grants issued on or before October 21, 1976, pursuant to then existing statutory authority."

3. Section 2800.0–3 is revised to read:

§ 2800.0–3 Authority.

The regulations in this part are issued under the authority of section 310 and title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740, 1761–1771).

4. Section 2800.0–5(h) is revised to read:

§ 2800.0–5 Definitions.

* * * * *

(h) "Right-of-way grant" means an instrument issued pursuant to title V of the act, or issued on or before October 21, 1976, pursuant to then existing statutory authority, authorizing the use of a right-of-way over, upon, under or through public lands for construction, operation, maintenance and termination of a project.

* * * * *

5. A new § 2801.4 is added to read:

§ 2801.4 Right-of-way grants issued on or before October 21, 1976.

A right-of-way grant issued on or before October 21, 1976, pursuant to then existing statutory authority is covered by the provisions of this part unless administration under this part diminishes or reduces any rights conferred by the grant or the statute under which it was issued, in which event the provisions of the grant or the then existing statute shall apply.

February 2, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 86–4024 Filed 2–24–86; 8:45 am]

Published in 51 F.R. 6542, February 25, 1986 - Effective March 27, 1986

#2575

troropropane (Propane, 2-nitro)

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

8. The authority citation for Part 271 continues to read as follows:

Authority: Sec. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

§ 271.1 [Amended]

9. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

Table 1—Regulations Implementing the Hazardous and Solid Waste Amendments of 1984

Date	Title or regulation
* * *	* * *
February 25, 1986..	Listing of four spent solvents and the still bottoms from their recovery.
* * *	* * *

[FR Doc. 86-3940 Filed 2-24-86; 8:45 am]

ING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2800

[Circular No. 2575]

Principles and Procedures for Rights-of-Way Granted Prior to October 21, 1976

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the existing regulations in 43 CFR Part 2800 to clarify that its procedures are applicable to rights-of-way granted prior to October 21, 1976, under statutory provisions repealed by the Federal Land Policy and Management Act of 1976. This amendment will resolve questions raised since the promulgation of the existing regulations in 43 CFR Part 2800 on the administration of rights-of-way issued under the repealed statutes.

EFFECTIVE DATE: March 27, 1986.

ADDRESS: Any suggestions or inquiries should be sent to: Director (330), Bureau and Management, Room 3660, Main ior Bldg., 1800 C Street, NW., shington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Theodore G. Bingham, (202) 343-5441.

SUPPLEMENTARY INFORMATION: A proposed rulemaking amending the existing regulations in 43 CFR Part 2800—Rights-of-Way, Principles and Procedures—was published in the Federal Register on July 2, 1985 (50 FR 27322), with a 60-day comment period. During the comment period, comments were received from seven sources, four from industry, one from an industry association, one from a local governmental entity and one from a Federal governmental entity.

All of the comments raised the issue of the need for the regulatory change contained in the proposed rulemaking. The comments expressed concern that the proposed rulemaking would, if adopted as a final rulemaking, diminish or reduce the rights conferred upon a holder of a right-of-way granted prior to October 21, 1976, as stated in the preamble to the proposed rulemaking, the procedures set forth in the proposed rulemaking would not be applicable in those instances where they are inconsistent with the provisions of a specific right-of-way grant or the statute under which it was granted. It was not the intent of the proposed rulemaking, nor is it the intent of this final rulemaking, to diminish or reduce the rights conferred by a right-of-way granted prior to October 21, 1976. This is clearly stated in the new section 2801.4 that is added to 43 CFR Part 2800 by the proposed rulemaking. However, in an effort to further clarify this point, the final rulemaking has adopted a change to § 2801.4 using a combination of language from a couple of comments. The change adopted by the final rulemaking directly addresses the question of rights conferred by a right-of-way grant and should answer the objections raised in several of the comments. In addition, if questions should arise regarding the rights of a right-of-way grant holder under a grant or statute, the earlier editions of the Code of Federal Regulations on rights-of-way will remain availabe to assist in interpretation of the rights conferred by the grant or earlier statute.

One comment suggested that the Bureau of Land Management was in a better position than would be a holder of one or more of these right-of-way grants to identify each of the right-of-way grants and the statutes under which they were granted and describe the impact that the provisions promulgated by this final rulemaking might have on those grants. The comment suggested that this review should be made before the final rulemaking is issued. In order to comply with this suggestion, the Bureau would have to examine the files on several thousand right-of-way grants, comparing each with various statutory provisions. On the other hand, a holder of a right-of-way grant would only have to deal with one or a few grants that are familiar because of use to determine whether the actions of the Bureau are diminishing or reducing the rights conferred by their particular grant(s). This suggestion has not been adopted.

The management procedures contained in the existing regulations in part 2800 will be used by the Department of the Interior to properly manage existing right-of-way grants and to meet its statutory responsibility to protect the public lands and their resources. Many of the provisions in the existing regulations are a restatement of those contained in the regulations they replaced and are those needed to properly administer the right-of-way. In carrying out the Department's management responsibilities, the authorized officer will be careful to avoid any action that will diminish or reduce the rights conferred under a right-of-way grant issued prior to October 21, 1976. Further, it is obvious that the holder of a right-of-way grant issued prior to October 21, 1976, will be alert to any action that appears to diminish or reduce the rights conferred by the grant and will challenge any such action. Therefore, the final rulemaking has adopted the provisions of the proposed rulemaking with certain changes to clarify the rights of holders of right-of-way grants issued prior to October 21, 1976.

The principal author of this final Rulemaking is Sheldon Weil, Division of Rights-of-Way, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that the publication of this final rulemaking is not a major Federal action significantly affecting the quality of the human environment, and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601).

The final rulemaking will clarify the Bureau of Land Management's authority to manage rights-of-way granted on or before October 21, 1976, removing questions that have arisen about that authority. The final rulemaking will

affect equally all holders of rights-of-way granted on or before October 21, 1976.

There are no additional information collection requirements contained in this final rulemaking requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 2800

Administrative practice and procedure, Communications, Electric power, Highways and roads, Pipelines, Public lands—rights-of-way.

Under the authority of section 310 and title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 2800, Group 2800, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

February 2, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

PART 2800—[AMENDED]

1. The authority citation for 43 CFR Part 2800 continues to read:

Authority: 43 U.S.C. 1761–1771.

§ 2800.0–1 [Amended]

2. Section 2800.0–1 is amended by removing the period at the end thereof and adding the phrase "and for the administration, assignment, monitoring and termination of right-of-way grants issued on or before October 21, 1976, pursuant to then existing statutory authority."

3. Section 2800.0–3 is revised to read:

§ 2800.0–3 Authority.

The regulations in this part are issued under the authority of section 310 and title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740, 1761–1771).

4. Section 2800.0–5(h) is revised to read:

§ 2800.0–5 Definitions.

* * * * *

(h) "Right-of-way grant" means an instrument issued pursuant to title V of the act, or issued on or before October 21, 1976, pursuant to then existing statutory authority, authorizing the use of a right-of-way over, upon, under or through public lands for construction, operation, maintenance and termination of a project.

* * * * *

5. A new § 2801.4 is added to read:

§ 2801.4 Right-of-way grants issued on or before October 21, 1976.

A right-of-way grant issued on or before October 21, 1976, pursuant to then existing statutory authority is covered by the provisions of this part unless administration under this part diminishes or reduces any rights conferred by the grant or the statute under which it was issued, in which event the provisions of the grant or the then existing statute shall apply.

[FR Doc. 86–4024 Filed 2–24–86; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 50950–5182]

Tanner Crab off Alaska; Season Closure

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of season closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the Tanner crab fishery in the North Mainland Section of the Kodiak District of Registration Area J must be closed in order to protect Tanner crab stocks. The Secretary of Commerce therefore issues this notice closing fishing for Tanner crab by vessels of the United States in the North Mainland Section. This action is intended as a management measure to conserve Tanner crab stocks.

DATE: This notice is effective at noon, Alaska Standard Time (AST), February 21, 1986. Public comments on this notice of closure are invited until March 10, 1986.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data on which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. AST, weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act), provides for inseason adjustments of season and area openings and closures. Implementing regulations at §671.27(b) specify that notices of these adjustments will be issued by the Secretary of Commerce under criteria set out in that section.

As of February 12, approximately 30 vessels have delivered 700,000 pounds of Tanner crabs from the North Mainland Section. Most of the catch reported to date has been concentrated in the traditionally less productive inshore fishing grounds that are protected from strong currents. In the offshore, normally more productive waters, unanticipated severe currents caused by high winds and extreme tides have pulled under many of the crab buoys that are used to mark the location of the pots to retrieve them. Therefore, a large amount of the gear that was set at the beginning of the fishing season has not been retrieved and many fishermen have chosen to fish inshore areas. Catch per unit of effort (CPUE), mostly from the inshore areas, on January 16 was about 40 crabs per pot. The CPUE fluctuated until the end of January, when it increased to over 60 crabs per pot. Since then, it has declined to approximately 20 crabs per pot on February 9. These unexpected wind and tide conditions, which forced an unanticipated increased fishing effort in the inshore areas, resulted in declining CPUE and will have a detrimental effect on the nearshore stocks unless the fishery is closed.

Based on the relative availability of inshore and offshore Tanner crab stocks to the fishery, it is highly likely that fishing pressure will be concentrated on the inshore stocks, thereby threatening harm to those stocks. Consequently, the Regional Director has determined that the condition of the Tanner crab stocks in the North Mainland Section of the Kodiak District is substantially different from the conditions anticipated on November 1, the beginning of the fishing year, and that this difference reasonably supports the need to protect the Tanner crab stocks. The North Mainland Section, as defined in §671.26(f)(l)(i), is closed by this notice until noon, Alaska Daylight Time, April 30, 1986, at which time the closure of this section prescribed in Table 1 of §671.21(a) will begin.

This closure will become effective after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3140

[Circular No. 2576]

Combined Hydrocarbon Leasing; Paying Quantities and Diligent Development of Combined Hydrocarbons

Under the authority of the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070), the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 3140, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

1. The authority citation for Part 3140 is added to read:

Authority: 30 U.S.C. 181 et seq.; 30 U.S.C. 351–359; 95 Stat. 1070; 43 U.S.C. 1701 et seq.

2. Part 3140 is amended by adding a new subpart 3142 to read:

PART 3140—[AMENDED]

Subpart 3142—Paying Quantities/Diligent Development

Sec.

3142.0–1 Purpose.
3142.0–3 Authority.
3142.0–5 Definitions.
3142.1 Diligent Development.
3142.2 Minimum production levels.
3142.2–1 Minimum production schedule.
3142.2–2 Advance royalties in lieu of production.
3142.3 Expiration.

Subpart 3142—Paying Quantities/ Diligent Development

§ 3142.0.1 Purpose.

This subpart provides definitions and procedures for meeting the production in paying quantities and the diligent development requirements for tar sand in all combined hydrocarbon leases.

§ 3142.0–3 Authority.

These regulations are issued under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070).

§ 3142.0–5 Definitions.

As used in Part 3140 of this title, the term "production in paying quantities" means: (a) Production, in compliance with an approved plain of operations and by nonconventional methods, of oil and gas which can be marketed; or (b) production of oil or gas by conventional methods as the term is currently used in Part 3160 of this title.

§ 3142.1 Diligent Development.

A lessee shall have met his/her diligent development obligation if:

(a) The lessee is conducting activity on the lease in accordance with an approved plan of operations; and

(b) The lessee files with the authorized officer, not later than the end of the eighth lease year, a supplement to the approved plan of operations which shall include the estimated recoverable tar sand reserves and a detailed development plan for the next stage of operations;

(c) The lessee has achieved production in paying quantities, as that term is defined in § 3142.0–5(a) of this title, by the end of the primary term; and

(d) The lessee annually produces the minimum amount of tar sand established by the authorized officer under the lease in the minimum production schedule which shall be made part of the plan of operations or pays annually advance royalty in lieu of this minimum production.

§ 3142.2 Minimum production levels.

§ 3142.2–1 Minimum production schedule.

Upon receipt of the supplement to the plan of operations described in § 3142.1(b) of this title, the authorized officer shall examine the information furnished by the lessee and determine if the estimate of the recoverable tar sand reserves is adequate and reasonable. In making this determination, the authorized officer may request, and the lessee shall furnish, any information that is the basis of the lessee's estimate of the recoverable tar sand reserves. As part of the authorized officer's determination that the estimate of the recoverable tar sand reserves is adequate and reasonable, he/she may consider, but is not limited to, the following: or grade, strip ratio, vertical and horizal continuity, extract process recoverability, and proven or unproven status of extraction technology, terrain, environmental mitigation factors, marketability of products and capital operations costs. The authorized officer shall then establish as soon as possible, but prior to the beginning of the eleventh year, based upon the estimate of the recoverable tar sand reserves, a minimum annual tar sand production schedule for the lease or unit operations which shall start in the eleventh year of the lease. This minimum production level shall escalate in equal annual increments to a maximum of 1 percent of the estimated recoverable tar sand reserves in the twentieth year of the lease and remain at 1 percent each year thereafter.

§ 3142.2–2 Advance royalties in lieu of production.

(a) Failure to meet the minimum annual tar sand production schedule level in any year shall result in the assessment of an advance royalty in lieu of production which shall be credited to future production royalty assessments applicable to the lease or unit.

(b) If there is no production during the lease year, and the lessee has reason to believe that there shall be no production during the remainder of the lease year, the lessee shall submit to the authorized officer a request for suspension of production at least 90 days prior to the end of that lease year and a payment sufficient to cover any advance royalty due and owing as a result of the failure to produce. Upon receipt of the request for suspension of production and the accompanying payment, the authorized officer shall approve a suspension of production for that lease year and the lease shall not expire during that year for lack of production.

(c) If there is production on the lease or unit during the lease year, but such production fails to meet the minimum production schedule required by the plan of operations for that lease or unit.

Published in 51 F.R. 7275, March 3, 1986 - Effective April 2, 1986

the lessee shall pay an advance royalty within 60 days of the end of the lease year in an amount sufficient to cover the difference between such actual production and the production schedule required by the plan of operations for that lease or unit and the authorized officer shall direct a suspension of production for those periods during which no production occurred.

§ 3142.3 Expiration.

Failure of the lessee to pay advance royalty within the time prescribed by the authorized officer, or failure of the lessee to comply with any other provisions of this subpart following the end of the primary term of the lease, shall result in the automatic expiration of the lease as of the first of the month following notice to the lessee of its failure to comply. The lessee shall remain subject to the requirement of applicable laws, regulations and lease terms which have not been met at the expiration of the lease.

J. Steven Griles,

Assistant Secretary of the Interior.

January 22, 1986.

[FR Doc. 86-4530 File 2-28-86; 8:45 am]

U.S.C. U.S. Code

Section II—Terms

Check: A written order, usually on a standard printed form, directing a bank or credit union to pay money.

Creditor: Any person or business that offers or extends credit, or to whom or to which a debt is owed. This term includes lending institutions (such as centralized charge systems) which, although not parties to the original transactions, seek help in collecting debts.

Debt: Any legal debt acknowledged by the soldier, or in where there is no reasonable dispute as to the facts or law, or which has been reduced to judgment.

Debt collector: Any person or business that solely collects debts owed to another person or business. (A debt collector is not a creditor.)

Disputed debt: Any debt, not reduced to a judgment, in which there is a genuine dispute between the parties as to the facts or law relating to the debt which would affect the obligation the soldier to pay.

Family member: As used in this regulation, an individual who qualifies for dependency benefits under certain conditions as set by Army regulations. (For example, spouse or unmarried child, to include stepchildren, and adopted or illegitimate children.)

Judgment: Any decision given by a court of justice or other competent tribunal as a result of proceedings instituted therein. As defined, a judgment includes any administrative enforcement order (Vollstreckungsanordnung) issued by the German federal post office (Deutsche Bundespost) regarding unpaid telephone bills. Such orders come within the coverage of this regulation regardless of where the soldier is stationed.

Soldier: Commissioned and warrant officers and enlisted personnel.

John O. Roach, II,

Army Liaison Officer, with the Federal Register.

[FR Doc. 86-4290 Filed 2-28-86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3140

[Circular No. 2576]

Combined Hydrocarbon Leasing; Paying Quantities and Diligent Development of Combined Hydrocarbons

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking provides definitions of and procedures for meeting the production in paying quantities and diligent development requirements for tar sand in all combined hydrocarbon leases. The definitions and procedures in the final rulemaking will be used by the Secretary of the Interior in carrying out his responsibilities under the Combined Hydrocarbon Leasing Act of 1981.

EFFECTIVE DATE: April 2, 1986.

ADDRESS: Any suggestions or inquiries should be sent to: Director (650), Bureau of Land Management, Room 3600, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:

Edward E. Coggs, (202) 343-2892

or

Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION: The proposed rulemaking on combined Hydrocarbon Leasing; Amendment Covering Paying Quantities and Diligent Development of Combined Hydrocarbon Leases was published in the **Federal Register** on January 10, 1985 (50 FR 1300), with a 60-day comment period. The comment period was extended to April 3, 1985, by a publication in the **Federal Register** on March 19, 1985, (50 FR 10998).

During the comment period, five written comments were received on the proposed rulemaking. These comments were given careful consideration. The comments were generally favorable, with suggestions for specific changes to the proposed rulemaking. Comments on specific sections of the proposed rulemaking will be addressed in the preamble under the section being discussed. Only those sections that were the subject of comments will be addressed.

Section 3142.1 Diligent development

Several comments were received on this section of the proposed rulemaking. The comments questioned whether the diligent development portion of the proposed rulemaking would be equally applicable to competitively obtained leases and to conversion leases. The diligent development requirements, which have been adopted with only minor changes by the final rulemaking, will be equally applicable to both competitive and conversion leases. The Department of the Interior has defined diligent development in its regulations in a manner that recognizes the financial commitment of a lessee to the development of the tar sand resource. However, under section 17(e) of the Mineral Leasing Act of 1920 (30 U.S.C. 226(e)) a combined hydrocarbon lease, whether issued as a conversion or competitive lease, has a primary term of ten years and for so long thereafter as oil or gas is produced in paying quantities. The only relief from this requirement to produce in paying quantities other than relief by a limited term extension, is provided by section 17(f) of the Act (30 U.S.C. 226(f)) for those leases with wells capable of production in paying quantities and for those leases which are suspended. However, the producible well provision would not be applicable to tar sand surface mines. Therefore, in the event a lessee fails to meet the requirement for production in paying quantities on a tar sand lease, the final rulemaking provides that the lessee will, if he/she has met the diligent development requirements for a tar sand lease, receive a suspension of production. This suspension will allow lessees to refine their technology after the end of the primary term without lease expiration. The Department believes this benefit should be available to all combined hydrocarbon leases, no matter how issued, and therefore, will apply this diligent development requirement to both converted and competitive combined hydrocarbon leases.

The penalty for failure to meet the diligent development obligation is lease expiration—either at the end of the primary term for failure to produce in paying quantities or during the extended term for failure to produce or to receive a lease suspension. The Department of the Interior may take certain actions to enforce this remedy, such as refusal to approve a supplement to an approved plan of operations which would authorize drilling or mining activity on the lease if the diligent development requirements have not been met. In the event a combined hydrocarbon lease is producing, or has a well capable of producing, oil or gas in paying quantities by conventional methods, the Department's remedy would be lease cancellation under 30 U.S.C. 188(a). Before pursuing such a drastic remedy, the Department would give considerable weight to the existence of production from the lease prior to conversion and to the lessee's justification of why the diligent development requirements were not met.

A final comment on this section expressed the view that the proposed rulemaking was confusing as to the interrelationship between the requirement for production in paying quantities and the requirement for diligent development of a lease. After careful review of the comment and the provisions of the proposed rulemaking, the final rulemaking has adopted an amendment as paragraph (c) that clarifies that a lessee will have met the requirement for diligent development if that lessee has achieved production in

ing quantities by the end of the primary term of the lease. This new provision will be applicable only on leases where tar sand is developed by unconventional methods.

Section 3142.2–1 Minimum Production Schedule

One comment suggested that this section of the proposed rulemaking would provide an incentive to a lessee to purposely understate the recoverable tar sand reserves estimate. Thus, if a lessee understated the recoverable tar sand reserve estimates, he/she could avoid or reduce the payment of advance royalties by making it easier to meet a (artificially low) minimum production requirement. The authorized officer should base the estimated recoverable tar sand reserves on all available data. It was the intent of the Department of the Interior in issuing the proposed rulemaking to allow the authorized officer to use other data to judge the adequacy of the estimates provided by the lessee. This is evidenced by the provision in the proposed rulemaking, which has been rewritten for clarification in the final rulemaking, providing a two-year period between the submission of data by the lessee and the initiation of the minimum production schedule. The final rulemaking has also been changed to clarify that the minimum production amount is established under the lease, rather than specifically set out in the lease, (see section 4 of the current lease form) and that the minimum production schedule will be part of the plan of operations.

Section 3142.2–2 Advance Royalties in Lieu of Production

As the result of a comment on this section of the proposed rulemaking, the section was carefully reviewed. That review resulted in the addition of new paragraphs (b) and (c) to the final rulemaking. These paragraphs clarify the conditions under which a lessee: (1) May request a suspension of production and pay advance royalty in lieu of production because of a failure to produce from the lease during a lease year; and (2) will pay advance royalty because of a failure to produce in an amount sufficient to meet the minimum production schedule for that year for the lease. Due to comments on the legality of allowing payment of advance royalty in lieu of production after the primary term of the lease expires, the final rulemaking provides for a suspension of production under section 17(f) of the Mineral Leasing Act (30 U.S.C. 226(f)) in payment of advance royalty. The Mineral Leasing Act also provides that no lease shall expire while production is suspended. After studying this issue, the Office of the Solicitor, Department of the Interior, concluded that the Bureau of Land Management may establish appropriate criteria for granting a suspension because the statute specified none (Solicitor's Opinion M–36953, 92 I.D. 293, 301 (1985)). A suspension of production does not prevent the lessee from operating on the lease, including the removal of minimal quantities of the tar sand resource needed for testing oil recovery technology.

Section 3142.3 Expiration

One comment recommended that this section be amended to provide for termination of the lease during the primary term, as provided in the general regulations covering leases in § 2920.9–3(a)(1). Section 2920.9–3(a)(1) is, by its own terms, applicable to leases issued under Part 2920, but is not applicable to leases issued under subchapter C. The final rulemaking has not adopted the recommended amendment.

The principal author of this final rulemaking is Edward E. Coggs, Division of Solid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management and the Office of the Solicitor, Department of the Interior.

The Department of the Interior has determined that this document is not a major rule Under Executive Order 12291 and will not have a significant economic effect of a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The leasing procedures provided in this final rulemaking are available to all entities who wish to avail themselves of the opportunity to lease and develop combined hydrocarbon resources, regardless of the size of the entity. The final rulemaking follows the guidance set out in the Combined Hydrocarbon Leasing Act and is designed to provide an equitable process for leasing and development of combined hydrocarbon resources.

While this final rulemaking is applicable to any combined hydrocarbon lease, it presently is specifically applicable only to the eight combined hydrocarbon leases that are in existence as a result of approval by the Secretary of the Interior under the terms of the Combined Hydrocarbon Leasing Act of 1981. Therefore, since there are fewer then ten respondents submitting information in response to the requirements in this final rulemaking in any one year, approval by the Office of Management and Budget under 44 U.S.C. 3507, as set forth in 5 CFR §§ 1320.4 and 1320.7 (c) and (d), is not required.

List of Subjects for 43 CFR Part 3140

Administrative practice and procedure, Environmental protection, Mineral royalties, Oil and gas reserves, Public lands—mineral reserves.

Under the authority of the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070), the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 3140, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

J. Steven Griles,

Assistant Secretary of the Interior.

January 22, 1986.

1. The authority citation for Part 3140 is added to read:

Authority: 30 U.S.C. 181 et seq.; 30 U.S.C. 351–359; 95 Stat. 1070; 43 U.S.C. 1701 et seq.

2. Part 3140 is amended by adding a new subpart 3142 to read:

PART 3140—[AMENDED]

Subpart 3142—Paying Quantities/Diligent Development

Sec.
3142.0–1 Purpose.
3142.0–3 Authority.
3142.0–5 Definitions.
3142.1 Diligent Development.
3142.2 Minimum production levels.
3142.2–1 Minimum production schedule.
3142.2–2 Advance royalties in lieu of production.
3142.3 Expiration.

Subpart 3142—Paying Quantities/Diligent Development

§ 3142.0.1 Purpose.

This subpart provides definitions and procedures for meeting the production in paying quantities and the diligent development requirements for tar sand in all combined hydrocarbon leases.

§ 3142.0–3 Authority.

These regulations are issued under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070).

§ 3142.0-5 Definitions.

As used in Part 3140 of this title, the term "production in paying quantities" means: (a) Production, in compliance with an approved plaln of operations and by nonconventional methods, of oil and gas which can be marketed; or (b) production of oil or gas by conventional methods as the term is currently used in Part 3160 of this title.

§ 3142.1 Diligent Development.

A lessee shall have met his/her diligent development obligation if:

(a) The lessee is conducting activity on the lease in accordance with an approved plan of operations; and

(b) The lessee files with the authorized officer, not later than the end of the eighth lease year, a supplement to the approved plan of operations which shall include the estimated recoverable tar sand reserves and a detailed development plan for the next stage of operations;

(c) The lessee has achieved production in paying quantities, as that term is defined in § 3142.0-5(a) of this title, by the end of the primary term; and

(d) The lessee annually produces the minimum amount of tar sand established by the authorized officer under the lease in the minimum production schedule which shall be made part of the plan of operations or pays annually advance royalty in lieu of this minimum production.

§ 3142.2 Minimum production levels.

§ 3142.2-1 Minimum production schedule.

Upon receipt of the supplement to the plan of operations described in § 3142.1(b) of this title, the authorized officer shall examine the information furnished by the lessee and determine if the estimate of the recoverable tar sand reserves is adequate and reasonable. In making this determination, the authorized officer may request, and the lessee shall furnish, any information that is the basis of the lessee's estimate of the recoverable tar sand reserves. As part of the authorized officer's determination that the estimate of the recoverable tar sand reserves is adequate and reasonable, he/she may consider, but is not limited to, the following: or grade, strip ratio, vertical and horizal continuity, extract process recoverability, and proven or unproven status of extraction technology, terrain, environmental mitigation factors, marketability of products and capital operations costs. The authorized officer shall then establish as soon as possible, but prior to the beginning of the eleventh year, based upon the estimate of the recoverable tar sand reserves, a minimum annual tar sand production schedule for the lease or unit operations which shall start in the eleventh year of the lease. This minimum production level shall escalate in equal annual increments to a maximum of 1 percent of the estimated recoverable tar sand reserves in the twentieth year of the lease and remain at 1 percent each year thereafter.

§ 3142.2-2 Advance royalties in lieu of production.

(a) Failure to meet the minimum annual tar sand production schedule level in any year shall result in the assessment of an advance royalty in lieu of production which shall be credited to future production royalty assessments applicable to the lease or unit.

(b) If there is no production during the lease year, and the lessee has reason to believe that there shall be no production during the remainder of the lease year, the lessee shall submit to the authorized officer a request for suspension of production at least 90 days prior to the end of that lease year and a payment sufficient to cover any advance royalty due and owing as a result of the failure to produce. Upon receipt of the request for suspension of production and the accompanying payment, the authorized officer shall approve a suspension of production for that lease year and the lease shall not expire during that year for lack of production.

(c) If there is production on the lease or unit during the lease year, but such production fails to meet the minimum production schedule required by the plan of operations for that lease or unit, the lessee shall pay an advance royalty within 60 days of the end of the lease year in an amount sufficient to cover the difference between such actual production and the production schedule required by the plan of operations for that lease or unit and the authorized officer shall direct a suspension of production for those periods during which no production occurred.

§ 3142.3 Expiration.

Failure of the lessee to pay advance royalty within the time prescribed by the authorized officer, or failure of the lessee to comply with any other provisions of this subpart following the end of the primary term of the lease, shall result in the automatic expiration of the lease as of the first of the month following notice to the lessee of its failure to comply. The lessee shall remain subject to the requirement of applicable laws, regulations and lease terms which have not been met at the expiration of the lease.

[FR Doc. 86-4530 File 2-28-86; 8:45 am]

BILLING CODE 4310-84-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 845

Transportation Accident/Incident Hearings and Reports; Practice Rules

AGENCY: National Transportation Safety Board.

ACTION: Final rule.

SUMMARY: This amendment to 49 CFR 845.13 requires parties to the Board's transportation accident hearings to select as their representatives qualified technical employees or members who do not occupy legal positions. This amendment would be similar to the condition that parties to aviation accident investigations be represented by suitable qualified technical personnel.

EFFECTIVE DATE: March 3, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. John M. Stuhldreher, General Counsel, National Transportation Safety Board, 800 Independence Avenue SW., Washington, DC 20594 (202-382-6540).

SUPPLEMENTARY INFORMATION: The Safety Board has established rules of practice in transportation accident hearings (Subparts A and B of 49 CFR Part 845). These rules permit the designation of parties to an accident hearing which is conditioned on among other things an entity's special knowledge which will contribute to the development of pertinent evidence. 49 CFR 845.13(a). This rule, however, does not specify that the party's representative at the hearing possess any specialized knowledge or expertise.

The Board's rules of procedure for aviation accident investigations require an entity as a prerequisite to being invited to participate in the investigation to provide "suitable qualified technical personnel" who will actively assist in the investigation. 49 CFR 831.9(a). Participants in nonaviation investigations are also represented by qualified technical personnel. Since the parties to a field investigation of an accident are virtually always also designated as parties to any hearing held in connection with the accident and since the hearing is an extension of the field investigation, the Board believes that ideally a person who represented a party during an earlier phase of the

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4700

[Circular No. 2577]

Revision of Existing Regulations on Protection, Management, and Control of Wild Free-Roaming Horses and Burros

Under the provisions of the Act of September 8, 1959 (18 U.S.C. 47), the Act of December 15, 1971, as amended (16 U.S.C. 1331–1340), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and the Act of June 28, 1934, as amended (43 U.S.C. 315), Part 4700, Subchapter D, Chapter II, Title 43 of the Code of Federal Regulations is revised to read as set forth below.

GROUP 4700—WILD FREE-ROAMING HORSE AND BURRO MANAGEMENT

Note.—The information collection requirements contained in Group 4700 have been approved by the Office of Management and Budget and assigned clearance number 1004–0042. The information is being collected to permit the authorized officer to remove wild horses and burros from private land and to determine whether an application for adoption of and title to wild horses or burros should be granted. Responses are required to obtain benefits.

PART 4700—PROTECTION, MANAGEMENT, AND CONTROL OF WILD FREE-ROAMING HORSES AND BURROS

Subpart 4700—General

Sec.

4700.0–1 Purpose.
4700.0–2 Objectives.
4700.0–3 Authority.
4700.0–5 Definitions.
4700.0–6 Policy.

Subpart 4710—Management Considerations

4710.1 Land use planning.
4710.2. Inventory and monitoring.
4710.3 Management areas.
4710.3–1 Herd management areas.
4710.3–2 Wild horse and burro ranges.
4710.4 Constraints on managment.

Sec.

4710.5 Closure to livestock grazing.
4710.6 Removal of unauthorized livestock in or near areas occupied by wild horses or burros.
4710.7 Maintenance of wild horses and burros on privately controlled lands.

Subpart 4720—Removal

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4750.4–1. Private maintenance and care agreement.
4750.4–2 Adoption fee.
4750.4–3 Request to terminate private maintenance and care agreement.
4750.4–4 Replacement animals.
4750.5 Application for title to wild horses and burros.

Subpart 4760—Compliance

4760.1 Compliance with the Private Maintenance and Care Agreement.

Subpart 4770—Prohibited Acts, Administrative Remedies, and Penalties

4770.1 Prohibited acts.
4770.2 Civil penalties.
4770.3 Administrative remedies.
4770.4 Arrest.
4770.5 Criminal penalties.

Authority: Act of Dec. 15, 1971, as amended (16 U.S.C. 1331–1340), Act of Oct. 21, 1976 (43 U.S.C. 1701 et seq.), Act of Sept. 8, 1959 (18 U.S.C. 47), Act of June 28, 1934 (43 U.S.C. 315).

Subpart 4700—General

§ 4700.0-1 Purpose.

The purpose of these regulations is to implement the laws relating to the protection, management, and control of wild horses and burros under the administration of the Bureau of Land Management.

§ 4700.0-2 Objectives.

The objectives of these regulations are management of wild horses and burros as an integral part of the natural system of the public lands under the principle of multiple use: protection of wild horses and burros from unauthorized capture, branding, harassment or death: and humane care and treatment of wild horses and burros.

§ 4700.0-3 Authority.

The Act of September 8, 1959 (18 U.S.C. 47); the Act of December 15, 1971, as amended (16 U.S.C. 1331-1340); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711, 1712, and 1734); the Act of June 28, 1934, as amended (43 U.S.C. 315); and the National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331-4335, and 4341-4347).

§ 4700.0-5 Definitions.

As used in this part, the term:

(a) "Act" means the Act of December 15, 1971, as amended (16 U.S.C. 1331-1340), commonly referred to as the Wild Free-Roaming Horse and Burro Act.

(b) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described herein.

(c) "Commercial exploitation" means using a wild horse or burro because of its characteristics of wildness for direct or indirect financial gain. Characteristics of wildness include the rebellious and feisty nature of such animals and their defiance of man as exhibited in their undomesticated and untamed state. Use as saddle or pack stock and other uses that require domestication of the animal are not commercial exploitation of the animals because of their characteristics of wildness.

(d) "Herd area" means the geographic area identified as having been used by a herd as its habitat in 1971.

(e) "Humane treatment" means handling compatible with animal husbandry practices accepted in the veterinary community, without causing unnecessary stress or suffering to a wild horse or burro.

(f) "Inhumane treatment" means any intentional or negligent action or failure to act that causes stress, injury, or undue suffering to a wild horse or burro and is not compatible with animal husbandry practices accepted in the veterinary community.

(g) "Lame wild horse or burro" means a wild horse or burro with one or more malfunctioning limbs that permanently impair its freedom of movement.

(h) "Old wild horse or burro" means a wild horse or burro characterized because of age by its physical deterioration and inability to fend for itself, suffering, or closeness to death.

(i) "Private maintenance" means the provision of proper care and humane treatment to excess wild horses and burros by qualified individuals under the terms and conditions specified in a Private Maintenance and Care Agreement.

(j) "Public lands" means any lands or interests in lands administered by the Secretary of the Interior through the Bureau of Land Management.

(k) "Sick wild horse or burro" means a wild horse or burro with failing health, infirmity or disease from which there is little chance of recovery.

(l) "Wild horses and burros" means all unbranded and unclaimed horses and burros that use public lands as all or part of their habitat, or that have been removed from these lands by the authorized officer but have not lost their status under section 3 of the Act. Where it appears in this part the term "wild horses and burros" is deemed to include the term "free-roaming".

§ 4700.0-6 Policy.

(a) Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat.

(b) Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans.

(c) Management activities affecting wild horses and burros shall be undertaken with the goal of maintaining free-roaming behavior.

(d) In administering these regulations, the authorized officer shall consult with Federal and State wildlife agencies and all other affected interests, to involve them in planning for and management of wild horses and burros on the public lands.

(e) Healthy excess wild horses and burros for which an adoption demand by qualified individuals exists shall be made available at adoption centers for private maintenance and care.

(f) Fees shall normally be required from qualified individuals adopting excess wild horses and burros to defray part of the costs of the adoption program.

Subpart 4710—Management Considerations

§ 4710.1 Land use planning.

Management activities affecting wild horses and burros, including the establishment of herd management areas, shall be in accordance with approved land use plans prepared pursuant to Part 1600 of this title.

§ 4710.2 Inventory and monitoring.

The authorized officer shall maintain a record of the herd areas that existed in 1971, and a current inventory of the numbers of animals and their areas of use. When herd management areas are established, the authorized officer shall also inventory and monitor herd and habitat characteristics.

§ 4710.3 Management areas.

§ 4710.3-1 Herd management areas.

Herd management areas shall be established for the maintenance of wild horse and burro herds. In delineating each herd management area, the authorized officer shall consider the appropriate management level for the herd, the habitat requirements of the animals, the relationships with other uses of the public and adjacent private lands, and the constraints contained in § 4710.4. The authorized officer shall prepare a herd management area plan, which may cover one or more herd management areas.

§ 4710.3-2 Wild horse and burro ranges.

Herd management areas may also be designated as wild horse or burro ranges to be managed principally, but not necessarily exclusively, for wild horse or burro herds.

§ 4710.4 Constraints on management.

Management of wild horses and burros shall be undertaken with the objective of limiting the animals' distribution to herd areas. Management shall be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans.

§ 4710.5 Closure to livestock grazing.

(a) If necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment or injury, the authorized officer may close appropriate areas of

the public lands to grazing use by all or a particular kind of livestock.

(b) All public lands inhabited by wild horses or burros shall be closed to grazing under permit or lease by domestic horses and burros.

(c) Closure may be termporary or permanent. After appropriate public consultation, a Notice of Closure shall be issued to affected and interested parties.

§ 4710.6 Removal of unauthorized livestock in or near areas occupied by wild horses or burros.

The authorized officer may establish conditions for the removal of unauthorized livestock from public lands adjacent to or within areas occupied by wild horses or burros to prevent undue harassment of the wild horses or burros. Liability and compensation for damages from unauthorized use shall be determined in accordance with subpart 4150 of this title.

§ 4710.7 Maintenance of wild horses and burros on privately controlled lands

Individuals controlling lands within areas occupied by wild horses and burros may allow wild horses or burros to use these lands. Individuals who maintain wild free-roaming horses and burros on their land shall notify the authorized officer and shall supply a reasonable estimate of the number of such animals so maintained. Individuals shall not remove or entice will horses or burros from the public lands.

Subpart 4720—Removal

§ 4720.1 Removal of excess animals from public lands.

Upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove the excess animals immediately in the following order.

(a) Old, sick, or lame animals shall be destroyed in accordance with Subpart 4730 of this title;

(b) Additional excess animals for which an adoption demand by qualified individuals exists shall be humanely captured and made available for private maintenance in accordance with Subpart 4750 of this title; and

(c) Remaining excess animals for which no adoption demand by qualified individuals exists shall be destroyed in accordance with subpart 4730 of this title.

§ 4720.2 Removal of strayed or excess animals from private lands.

§ 4720.2-1 Removal of strayed animals from private lands.

Upon written request from the private landowner to any representative of the Bureau of Land Management, the authorized officer shall remove stray wild horses and burros from private lands as soon as practicable. The private landowner may also submit the written request to a Federal marshal, who shall notify the authorized officer. The request shall indicate the numbers of wild horses or burros, the date(s) the animals were on the land, legal description of the private land, and any special conditions that should be considered in the gathering plan.

§ 4720.2-2 Removal of excess animals from private lands.

If the authorized officer determines that proper management requires the removal of wild horses and burros from areas that include private lands, the authorized officer shall obtain the written consent of the private owner before entering such lands. Flying aircraft over lands does not constitute entry.

Subpart 4730—Destruction of Wild Horses or Burros and Disposal of Remains

§ 4730.1 Destruction.

Except as an act of mercy, no wild horse or burro shall be destroyed without the authorization of the authorized officer. Old, sick, or lame animals shall be destroyed in the most humane manner possible. Excess animals for which adoption demand does not exist shall be destroyed in the most humane and cost efficient manner possible.

§ 4730.2 Disposal of remains.

Remains of wild horses or burros that die after capture shall be disposed of in accordance with State or local sanitation laws. No compensation of any kind shall be received by any agency or individual disposing of remains. The products of rendering are not considered remains.

Subpart 4740—Motor Vehicles and Aircraft

§ 4740.1 Use of motor vehicles or aircraft.

(a) Motor vehicles and aircraft may be used by the authorized officer in all phases of the administration of the Act, except that no motor vehicle or aircraft, other than helicopters, shall be used for the purpose of herding or chasing wild horses or burros for capture or destruction. All such use shall be conducted in a humane manner.

(b) Before using helicopters or motor vehicles in the management of wild horses or burros, the authorized officer shall conduct a public hearing in the area where such use is to be made.

§ 4740.2 Standards for vehicles used for transport of wild horses and burros.

(a) Use of motor vehicles for transport of wild horses or burros shall be in accordance with appropriate local, State and Federal laws and regulations applicable to the humane transportation of horses and burros, and shall include, but not be limited to, the following standards:

(1) The interior of enclosures shall be free from protrusion that could injure animals;

(2) Equipment shall be in safe conditions and of sufficient strength to withstand the rigors of transportation;

(3) Enclosures shall have ample head room to allow animals to stand normally;

(4) Enclosures for transporting two or more animals shall have partitions to separate them by age and sex as deemed necessary by the authorized officer;

(5) Floors of enclosures shall be covered with nonskid material;

(6) Enclosures shall be adequately ventilated and offer sufficient protection to animals from inclement weather and temperature extremes; and

(7) Unless otherwise approved by the authorized officer, transportation shall be limited in sequence to a maximum of 24 hours followed by a minimum of 5 hours of on-the-ground rest with adequate feed and water.

(b) The authorized officer shall not load wild horses or burros if he/she determines that the vehicle to be used for transporting the wild horses or burros is not satisfactory for that purpose.

Subpart 4750—Private Maintenance

§ 4750.1 Private maintenance.

The authorized officer shall make available for private maintenance all healthy excess wild horses or burros for which an adoption demand by qualified individuals exists.

§ 4750.2 Health, identification, and inspection requirements.

§ 4750.2-1 Health and identification requirements.

(a) An individual determined to be qualified by the authorized officer shall verify each excess animal's soundness and good health, determine its age and sex, and administer immunizations,

worming compounds, and tests for communicable diseases.

(b) Documentation conforming compliance with State health inspection and immunization requirements for each wild horse or burro shall be provided to each adopter by the authorized officer.

(c) Each animal offered for private maintenance, including orphan and unweaned foals, shall be individually identified by the authorized officer with a permanent freeze mark of alpha numeric symbols on the left side of its neck. The freeze mark identifies the animal as Federal property subject to the provisions of the Act and these regulations by a patented symbol, the animal's year of birth, and its individual identification number. The authorized officer shall record the freeze mark on the documentation of health and immunizations. For purposes of this subpart, a freeze mark applied by the authorized officer is not considered a brand.

§ 4750.2-2 Brand inspection.

The authorized officer shall make arrangements on behalf of an adopter for State inspection of brands, where applicable, of each animal to be transported across the State where the adoption center is located. The adopter shall be responsible for obtaining inspections for brands required by other States to or through which the animal may be transported.

§ 4750.3 Application requirements for private maintenance.

§ 4750.3-1 Application for private maintenance of wild horses and burros.

An individual applying for a wild horse or burro shall file an application with the Bureau of Land Management on a form approved by the Director.

§ 4750.3-2 Qualification standards for private maintenance.

(a) To qualify to receive a wild horse or burro for private maintenance, an individual shall:

(1) Be 18 years of age or older;

(2) Have no prior conviction for inhumane treatment of animals or for violation of the Act or these regulations;

(3) Have adequate feed, water, and facilities to provide humane care to the number of animals requested. Facilities shall be in safe condition and of sufficient strength and design to contain the animals. The following standards apply:

(i) A minimum space of 144 square feet shall be provided for each animal maintained, if exercised daily; otherwise, a minimum of 400 square feet shall be provided for each animal;

(ii) Until fence broken, adult horses shall be maintained in an enclosure at least 6 feet high; burros in an enclosure at least 4½ feet high; and horses less than 18 months old in an enclosure at least 5 feet high. Materials shall be protrusion-free and shall not include large-mesh woven or barbed wire;

(iii) Shelter shall be available to mitigate the effects of inclement weather and temperature extremes. The authorized officer may require that the shelter be a structure, which shall be well-drained and adequately ventilated;

(iv) Feed and water shall be adequate to meet the nutritional requirements of the animals, based on their age, physiological condition and level of activity; and

(4) Have obtained no-more than 4 wild horses and burros within the preceding 12-month period, unless specifically authorized in writing by the authorized officer.

(b) The authorized officer shall determine an individual's qualifications based upon information provided in the application form required by § 4750.3-1 of this subpart and Bureau of Land Management records of any previous private maintenance by the individual under the Act.

§ 4750.3-3 Supporting information and certification for private maintenance of more than 4 wild horses or burros.

(a) An individual applying for more than 4 wild horses or burros within a 12-month period, or an individual or group of individuals requesting to maintain more than 4 wild horses or burros at a single location shall provide a written report prepared by the authorized officer, or by a local humane official, veterinarian, cooperative extension agent, or similarly qualified person approved by the authorized officer, verifying that the applicant's facilities have been inspected appear adequate to care for the number of animals requested, and satisfy the requirements contained in § 4750.3-2(a).

(1) The report shall include a description of the facilities, including corral sizes, pasture size, and shelter, barn, or stall dimensions, and shall note any discrepancies between the facilities inspected and representations made in the application form.

(2) When an applicant requests 25 or more animals or when 25 or more animals will be maintained at any single location regardless of the number of applicants, the facilities for maintaining the adopted animals shall be inspected by the authorized officer prior to approving the application.

(b) Any individual or group represented by a power of attorney and applying for more than 4 animals shall provide the following:

(1) A summary of the age, sex, and number of wild free-roaming horses or burros requested by species;

(2) Requested adoption date and center location;

(3) If applicable, names, addresses and telephone numbers of all applicants represented by a power of attorney submitted with the request;

(4) A transportation plan that describes the transport vehicle and any rest-stops;

(5) A distribution plan for delivering the animals to their assigned adopters;

(6) Names, addresses, and a concise summary of the experience of the individuals who will handle the adopted animals during transportation and distribution; and

(7) When the adopted animals will be maintained at a single location or where the applicants have been solicited by the holder of their power of attorney, a concise statement outlining the arrangements, including duties and responsibilities of the parties, for maintaining the animals.

§ 4750.3-4 Approval or disapproval of applications.

If an application is approved, the authorized officer shall offer the individual an opportunity to select the appropriate number, sex, age and species of animals from those available. If the authorized officer disapproves an application for private maintenance because the applicant lacks adequate facilities or transport, the individual may correct the shortcoming and file a new application.

§ 4750.4 Private maintenance of wild horses and burros.

§ 4750.4-1 Private Maintenance and Care Agreement.

To obtain a wild horse or burro, a qualified applicant shall execute a Private Maintenance and Care Agreement and agree to abide by its terms and conditions, including but not limited to the following:

(a) Title to wild horses and burros covered by the agreement shall remain in the Federal Government for at least 1 year after the Private Maintenance and Care Agreement is executed and until a Certificate of Title is issued by the authorized officer.

(b) Wild horses and burros covered by the agreement shall not be transferred for more than 30 days to another location or to the care of another individual without the prior approval of the authorized officer;

(c) Wild horses and burros covered by the agreement shall be made available for physical inspection within 7 days of receipt of a written request by the authorized officer;

(d) The authorized officer shall be notified within 7 days of discovery of the death, theft or escape of wild horses and burros covered by the agreement;

(e) Adopters are financially responsible for the proper care and treatment of all wild horses and burros covered by the agreement.

(f) Adopters are responsible, as provided by State law, for any personal injury, property damage, or death caused by animals in their care; for pursing animals that escape or stray; and for costs of recapture.

(g) Adopters shall notify the authorized officer within 30 days of any change in the adopter's address; and

(h) Adopters shall dispose of remains in accordance with applicable sanitation laws.

§ 4750.4-2 Adoption fee.

(a) An individual obtaining wild horses and burros shall pay the Bureau of Land Management an adoption fee of $125 per horse and $75 per burro, except that no fee shall be paid for unweaned foals.

(b) The Director may adjust or waive the adoption fee on determining that wild horses or burros in the custody of the Bureau of Land Management are unadoptable when the full adoption fee is required, and that it is in the public interest to adjust or waive the adoption fee stated in paragraph (a) of this section. The adjustment or waiver shall extend only to those persons who are willing to maintain such animals privately, who demonstrate the ability to care for them properly, and who agree to comply with all rules and regulations relating to wild horses and burros.

§ 4750.4-3 Request to terminate Private Maintenance and Care Agreement.

An adopter may request to terminate his/her responsibility for an adopted animal by submitting a written relinquishment of the Private Maintenance and Care Agreement for that animal. The authorized officer shall arrange to transfer the animal to another qualified applicant or take possession of the animal at a location specified by the authorized officer within 30 days of receipt of the written request for relinquishment.

§ 4750.4-4 Replacement animals.

The authorized officer shall replace an animal, upon request by the adopter, if [illegible] within 6 months of the execution of the Private Maintenance and Care Agreement the animal dies or is required to be destroyed due to a condition that existed at the time of placement with the adopter; and (b) the adopter provides, within a reasonable time, a statement by a veterinarian certifying that reasonable care and treatment would not have corrected the condition. Transportation of the replacement animal shall be the responsibility of the adopter.

4750.5 Application for title to wild horses and burros.

(a) The adopter shall apply for title, using a form designated by the Director, upon signing the Private Maintenance and Care Agreement.

(b) The authorized officer shall issue a Certificate of Title after 12 months, if the adopter has complied with the terms and conditions of the agreement and the authorized officer determines, based either on a field inspection or a statement provided by the adopter from a veterinarian, extension agent, local humane official, or other individual acceptable to the authorized officer, that the animal or animals covered by the Agreement have received proper care and humane treatment.

(c) An adopter may not obtain title to more than 4 animals per 12-month period of private maintenance. Effective the date of issuance of the Certificate of Title, Federal ownership of the wild horse or burro ceases and the animal loses its status as a wild horse or burro and is no longer under the protection of the Act or regulations under this title.

Subpart 4760—Compliance

§ 4760.1 Compliance with the Private Maintenance and Care Agreement.

(a) An adopter shall comply with the terms and conditions of the Private Maintenance and Care Agreement and these regulations. The authorized officer may verify compliance by visits to an adopter, physical inspections of the animals, and inspections of the facilities and conditions in which the animals are being maintained. The authorized officer may authorize a cooperative extension agent, local humane official or similarly qualified individual to verify compliance.

(b) The authorized officer shall verify compliance with the terms of the Private Maintenance and Care Agreement when an adopter has received 25 or more animals or when 25 or more animals are maintained at a single location.

(c) The authorized officer shall conduct an investigation when a complaint concerning the care, treatment, or use of a wild horse or burro is received by the Bureau of Land Management.

(d) The authorized officer may require, as a condition for continuation of a Private Maintenance and Care Agreement, that an adopter take specific corrective actions if the authorized officer determines that an animal is not receiving proper care or is being maintained in unsatisfactory conditions. The adopter shall be given reasonable time to complete the required corrective actions.

Subpart 4770—Prohibited Acts, Administrative Remedies, and Penalties

§ 4770.1 Prohibited acts.

The following acts are prohibited:

(a) Maliciously or negligently in juring or harassing a wild horse or burro;

(b) Removing or attempting to remove a wild horse or burro from the public lands without authorization from the authorized officer;

(c) Destroying a wild horse or burro without authorization from the authorized officer except as an act of mercy;

(d) Selling or attempting to sell, directly or indirectly, a wild horse or burro or its remains;

(e) Commercially exploiting a wild horse or burro;

(f) Treating a wild horse or burro inhumanely;

(g) Violating a term or condition of the Private Maintenance and Care Agreement;

(h) Branding a wild horse or burro;

(i) Removing or altering a freeze mark on a wild horse or burro;

(j) Violating an order, term, or condition established by the authorized officer under this part.

§ 4770.2 Civil penalties.

(a) A permittee or lessee who has been convicted of any of the prohibited acts found in § 4770.1 of this title may be subject to suspension or cancellation of the permit or lease.

(b) An adopter's failure to comply with the terms and conditions of the Private Maintenance and Care Agreement may result in the cancellation of the agreement, repossession of wild horses and burros included in the agreement and disapproval of requests by the adopted for additional excess wild horses and burros.

§ 4770.3 Administrative remedies.

Any person who is adversely affected by a decision of the authorized officer in

the administration of these regulations may file an appeal in accordance with 43 CFR 4.4 within 30 days of receipt of the written decision.

§ 4770.4 Arrest.

The Director of the Bureau of Land Management may authorize an employee who witnesses a violation of the Act or these regulations to arrest without warrant any person committing the violation, and to take the person immediately for examination or trial before an officer or court of competent jurisdiction. Any employee so authorized shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of the Act or these regulations.

§ 4770.5 Criminal penalties.

Any person who commits any act prohibited in § 4770.1 of these regulations shall be subject to a fine of not more than $2,000 or imprisonment for not more than 1 year, or both, for each violation. Any person so charged with such violation by the authorized officer may be tried and sentenced by a United States Commissioner or magistrate, designated for that purpose by the court by which he/she was appointed, in the same manner and subject to the same conditions as provided in 18 U.S.C. 3401.

Dated: February 7, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 88-4532 Filed 2-28-88; 8:45 am]

#2577

[illegible]ARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4700

[Circular No. 2577]

Revision of Existing Regulations on Protection, Management, and Control of Wild Free-Roaming Horses and Burros

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking revises the provisions on wild free-roaming horses and burros in Part 4700 to reduce the regulatory burden on the public, to clarify the management procedures of the Bureau of Land Management as they affect the public, to remove unnecessary provisions, and to improve the organization of the regulations.

EFFECTIVE DATE: April 2, 1986.

ADDRESS: Inquiries or suggestions should be sent to: Director (250), Bureau of Land Management, Room 901, Premier Building, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: [illegible]n S. Boyles (202) 653-9215.

[illegible]PLEMENTARY INFORMATION: A proposed rulemaking to revise the existing regulations on the protection, managment, and control of wild free-roaming horses and burros on public lands was published in the Federal Register on December 18, 1984 (49 FR 49252). Comments were invited for a period of 60 days ending February 19, 1985, during which period a total of 19 comments were received, with 10 from associations, 6 from Federal agency offices, 2 from State governments, and 1 from a Member of Congress. All of the comments have been given careful consideration during the decisionmaking process on this final rulemaking.

The comments contained discussions of specific sections of the proposed rulemaking and in many instances recommended changes, some of which have been adopted in this final rulemaking. This preamble will discuss only those sections that were the subject of specific comments or were changed.

Section 4700.0-2 Objectives.

One comment suggested that the objectives should be amended to conform more closely to the statutory objectives stated in the Act of December [illegible] 1971, as amended (16 U.S.C. 1331-[illegible]) (the Act). Based on this comment, [illegible]section has been amended to incorporate the statutory requirement that wild horses and burros be managed "as an integral part of the natural system of the public lands" under the principle of multiple use.

Section 4700.0-5 Definitions.

Several comments addressed the proposed definitions of the terms "appropriate management level" and "excess animals." Most of the comments criticized the proposed definitions of the terms as being inconsistent with the statutory definitions and intent, and urged that the statutory language be used. In response to these comments, the definitions of both terms have been removed from the final rulemaking. The language of the statute will govern management.

One comment questioned whether the definition of "authorized officer" allows for appeals by the public to higher authority. The definition merely defines who is to carry out the provisions of this rulemaking, and has no bearing on appeals under the Administrative Procedure Act or 43 CFR Part 4 of any decision made under these regulations. The definition is not changed in the final rulemaking.

Two comments addressed the definitions for "band" and "herd", urging that the former be removed and that the latter be conformed to the language in the Act. In response to these comments, the definitions of both terms have been removed from the rulemaking. "Herd" is defined in the Act. "Band" is not used in the text of the final rulemaking, and thus does not require definition.

Several comments addressed the definition of "commercial exploitation," urging that it be expanded to include slaughtering and processing the remains of horses and burros, and not be limited to using the wild characteristics of the animals for financial gain. Slaughtering a wild horse or burro is prohibited by § 4770.1(c) of this relemaking, and selling a wild horse or burro or its remains is prohibited by § 4770.1(d). Processing of the remains of a wild horse or burro is addressed in § 4730.2, which prohibits receiving compensation for remains, but allows disposal of remains through rendering. The definition is retained unchanged.

Several comments objected to the proposed definition of "humane treatment," which required that handling be consistent with "standard animal husbandry practices." Because no specific group of husbandry practices can be presented as a "standard," the word has been replaced in the final rulemaking with the phrase "accepted by the veterinary community." Accepted animal husbandry practices are those outlined in textbooks on the subject. The BLM has relied primarily on the following:

1. Bradley, Melvin. *Horses: A Practical and Scientific Approach.* New York: McGraw-Hill, Inc., 1981.
2. Ensminger, M.E. *Horses and Horsemanship*, 5th ed. Danville, Illinois: The Interstate Printers and Publishers, Inc., 1977.

In addition, the adjectives "kind" and "merciful" have been removed because they are redundant, given the requirement that handling not cause unnecessary stress or suffering.

Another comment stated that "stress," referred to in the definition, is undefined. In this and all other cases where common words or expressions are used, the ordinary dictionary definition is intended to be applied.

Several comments addressed the definition of "inhumane treatment." Some stated a preference for the definition in the existing regulations; others stated that requiring the treatment to be intentional is too restrictive, and that it should be defined to include inflicting pain and suffering. The word "death" has been replaced in the definition in the final rulemaking with "undue suffering", in response to one of the comments, and to allow the authorized officer to destroy animals in appropriate circumstances. The definition has also been expanded to include negligent as well as intentional behavior, and the word "standard" is replaced for the reasons stated above. However, the definition in the existing regulations is not retained because it may be too restrictive, in that it includes a specific list of proscribed acts or omissions without stating clearly that other acts or omissions may constitute inhumane treatment.

One comment suggested that the definition of "old wild horse or burro" should be amended to make it clear that, to be subject to destruction as an act of mercy because of physical deterioration, the animal's deterioration must have rendered it unable to fend for itself. This suggestion has been adopted in the final rulemaking.

One comment stated that the definition of "wild horses and burros" should be amended to include their progeny. This change has not been adopted in the final rulemaking because it would include animals born after their mothers have been placed under a Private Maintenance and Care Agreement. Such animals have never been "unbranded or unclaimed horses and burros on public lands of the United States," the statutory definition of wild horses and burros. The final rulemaking

does address progeny born while the mothers are on public land or at adoption centers. In response to a comment, the definition has been amended to assure that the term includes the characteristic "free-roaming".

One comment suggested including in the rulemaking a definition for "herd area." This suggestion has been adopted in the final rulemaking. Two comments urged that a definition of "malicious harassment" be included. This request has not been adopted in the final rulemaking. Instead, the prohibition in § 4770.1(a) has been amended to prohibit negligent as well as malicious injury or harassment. The terms negligence and malice are both well-defined in the law.

Section 4700.0–6 Policy.

Several comments addressed paragraph (a) of this section, urging that the policy should emphasize that wild horses and burros should be managed as one of the multiple uses of the public lands, not as a dominant use limited only by the capacity of the habitat. Other comments urged that more than just museum-exhibit populations should be maintained on the public lands. Paragraph (a) of § 4700.0–6 has been amended in the final rulemaking to accommodate both suggestions, that is, to require that populations be self-sustaining and that populations of horses and burros be kept in balance with other uses as well as the productive capacity of the habitat.

Several comments addressed paragraph (b) of this section, urging that the language on forage allocation in the existing regulations (43 CFR 4700.0–6(c)) be retained. Other comments stated that the word "comparably" is vague and should be replaced by "equivalent" in describing how wild horses and burros will be considered in relation to other resources in formulating land use plans. Specific provision for forage allocation is not necessary because the policy is clearly stated that wild horse and burro management will maintain self-sustaining populations. This cannot be done without adequate forage. The word "comparably" is used in the existing regulations to require all resource values to be considered in proportion to their presence on the land, competition with other resources, and the interest of the public in them. Assigning equal or equivalent weight to all resources, as some comments suggested, would not allow varying circumstances to be treated appropriately. The paragraph is not changed in the final rulemaking.

Two comments addressed paragraph (c) of this section, urging that it be policy to manage wild horses and burros at the minimum feasible level, and expressing concern that maintaining free-roaming behavior of the animals may be inconsistent with multiple use of the public lands. Failure to maintain the free-roaming nature of the animals would be contrary to the policy established by the Act. The requirement that management shall be at the minimum level to attain planning objectives is contained in § 4710.4. It is not necessary to amend this provision.

One comment urged that paragraph (d) of this section be amended to preclude cooperative arrangements for the management of wild horses and burros. The Act specifically authorizes the Secretary of the Interior to enter into cooperative agreements with State and local governments and with individual landowners to attain management objectives. The paragraph is retained in the final rulemaking. It should be understood that § 4710.7 retains the statutory provisions for individuals to maintain wild horses and burros on their private land.

Although there were no comments on paragaph (e), it has been amended by removing the word "nationwide" in reference to adoption centers, to avoid misleading the public into expecting to find adoptable animals in every community around the country.

In response to several comments, and to make it consistent with § 4750.4–2(b), paragraph (f) has been amended to state that adoption fees will "normally" be required.

One comment asked for a policy declaration on removal of animals from private land. Such a declaration is unnecessary because the procedure is clearly stated in § 4720.2–1. Another comment asked that management guidelines be included in the policy statement. Such guidelines are more appropriately stated in manuals for the use of field personnel of the Bureau. Neither suggestion has been adopted in the final rulemaking.

Section 4710.1 Land use planning.

Several comments addressed this section. One expressed general support, another asked for language requiring that management activities comply with law and Congressional intent, and a third urged that management activities be included in approved land use plans. In response to the second comment, management activities shall be in accordance with the law regardless of any criteria in regulations. In response to the third, the paragraph has been amended by substituting the words "in accordance" for "compatible" in describing the relationship of management actions to land use plans. Management activities, including the development of herd management area plans, must not only be compatible with the land use plan but must also reflect specific guidance derivable from the land use plan on the subjects of resource allocation, relationships between wild horses and burros and other recognized uses, and critical resource use levels that would require modification of the plan's multiple-use prescriptions.

Section 4710.2 Inventory and monitoring.

Several comments urged that the authorized officer be required to address the numbers of horses and burros that existed in herd areas in 1971 as a basis for further management. This suggestion is not adopted in the final rulemaking. There is no indication in the Act or its legislative history that herds should be managed at their 1971 size or any other specific level. Furthermore, although estimates of 1971 population levels have been made, they are at best conjectural and highly unreliable. It is more appropriate to allow the authorized officer the flexibility to determine appropriate management levels based on analysis of competing land uses, forage availability, and public concern.

Another comment urged that the authorized officer be required to monitor herd and habitat characteristics regardless of whether herd management areas are established. This suggestion has not been adopted in the final rulemaking, because this type of information is useful only when herds are to be managed in the long term. This provision has been amended to delete the list of items to be inventoried and monitored on herd management areas, because these will vary depending on the objectives in the herd management area plan.

Section 4710.3–1 Herd management areas.

Several comments addressed this section, expressing concern that it could be interpreted to direct every District Manager of the Bureau of Land Management to establish herd management areas. This provision has been amended to alleviate this concern and to clarify that herd management areas shall be established only where herds existed in 1971. One comment suggested that the effect on nearby private land of management for wild horses and burros should be taken into account in delineating herd management areas. This suggestion has been adopted in the final rulemaking.

Section 4710.3–2 Wild horse and burro ranges.

Several comments objected to this section as implying that numerous wild horse and burro ranges will be

lished on public lands. Such ranges specifically provided for by law (16 U.S.C. 1333(a)), and will be established only upon completion of the appropriate planning process, including public participation. The section has been retained, with editorial changes, in the final rulemaking.

Section 4710.4 Constraints on management.

Several comments addressed this section, pointing out that limiting wild horses and burros to their 1971 "yearlong" habitat could effectively eliminate most of their actual habitat from management as herd areas, due to their seasonal use of some areas. The section has been amended to remove the reference to yearlong habitat. In this connection, a definition has been added for "herd area" in § 4700.0–5. Another change has been incorporated to make it clear that management will not be restricted to herd areas, but will rather be undertaken with the objective of limiting animal distribution to herd areas by controlling herd size to prevent habitat from being overpopulated.

Section 4710.5 Closure to livestock grazing.

Numerous comments addressed paragraph (a) of this section, either posing it as inconsistent with multiple management, or urging that it be nded to provide additional protection for wild horses and burros. Actions under this section are discretionary with the authorized officer and subject to public consultation. The provision is necessary to allow the authorized officer to meet the needs of all users of the public lands, including wild horses and burros, and is retained unamended in the final rulemaking.

Several comments asked that paragraph (b) of this section be amended to allow camp horses or riding stock to graze on public lands inhabited by wild horses and burros. The paragraph has been amended to make it clear that herd areas are closed only to grazing under permit or lease by domestic horses and burros, and not to pack or camp horses. In addition, for the latter it is the normal practice that outfitters carry fodder for their animals with them, or limit their grazing by tying or hobbling them, so interference by these animals with or consumption of forage needed by wild horses and burros is minimal.

As a result of concerns expressed in numerous comments, paragraph (c) of this section has been rewritten in the final rulemaking to clarify the limits on authority of the authorized officer. cient authorities for this provision are found in the Taylor Grazing Act and the Federal Land Policy and Management Act, as well as the Wild Free-Roaming Horse and Burro Act. Any notice of closure will be subject to the normal administrative appeal process.

Section 4710.6 Removal of unauthorized livestock in or near areas occupied by wild horses or burros.

In response to public comment, this section has been amended to make it clear that any conditions established for the removal of unauthorized livestock would apply only to removal from public lands.

Section 4710.7 Maintenance of wild horses and burros on privately controlled lands.

This section has been amended to remove the requirement that private maintenance occur only on unfenced land, because that requirement is not supported by law. Landowners may voluntarily provide for and maintain wild horses and burros that freely move onto their land, whether it is fenced or not.

Section 4720.1 Removal.

One comment discussed the term "current information" in this section, and suggested that detailed language in the statute at 16 U.S.C. 1333(b)(2) be included in the regulation. The authorized officer is equally bound by the statute and the regulations, and there is no need to repeat the requirements of the law in the regulations. The comment is not adopted in the final rulemaking.

An editorial change has been made in § 4720.1(b), adding the word "humanely" to meet the requirements of law.

Three comments addressed paragraph (c) of this section, 2 of them urging that it be removed from the rulemaking, and 1 asking that a time limit be set for holding captured animals. Section 1333(b)(2)(C) of the Act requires the humane destruction of excess wild horses and burros. Even if the section were removed from the rulemaking, the responsibility to carry out the law would remain. Retaining the paragraph in the rulemaking makes it clear that the Secretary may impose standards for humane destruction of excess animals. Setting a time limit on holding captured animals would deprive the authorized officer of flexibility needed to meet various circumstances, such as temporary lulls in adoption demand.

Section 4720.2–1 Removal of strayed animals from private lands.

Several comments addressed this section, stating that the information requested from private landowners seeking removal of strayed animals from their land was too burdensome and should be supplied only in the discretion of the landowner. However, it would be impossible for the authorized officer to be responsive to a request for removal of strayed animals without specific information about the number of animals involved, their location and that of the private lands, and the dates the animals were observed. Requiring this information would enable the authorized officer to determine the appropriate agency action and to assign to each individual request its appropriate priority. Therefore, the final rulemaking makes the content of such requests mandatory by replacing the word "should" with "shall." Other comments urged that the regulation require immediate or priority removal of strayed animals. The comments are not adopted in the final rulemaking, because circumstances may make such action impossible. Requiring that removal be accomplished as soon as practicable commits the Bureau to expeditious removal of strayed animals.

Section 4720.2–2 Removal of excess animals from private lands.

One comment stated that the authorized officer should not be required to obtain written permission from the owners of unimproved private lands intermingled with public lands in herd areas when removing excess animals. This comment has been adopted in the final rulemaking by removing the phrase "or using". A sentence has been added to make it clear that flying aircraft over a parcel of land does not constitute entry.

Section 4730.1 Destruction.

Several comments addressed this section, observing both the Congressional intent that destruction be a tool for managing wild horses and burros, and the legislatively drawn distinction between destruction of excess animals and destruction of old, sick, and lame animals as an act of mercy. The section has been rewritten in the final rulemaking to conform to the statute in these respects.

Section 4730.2 Disposal of remains.

Several comments addressed this section, some urging that it prohibit processing of remains, and others that some provision be made for compensating individuals for disposal of remains. Neither suggestion has been adopted in the final rulemaking. To provide consistency with the Act, and to remove the ambiguity between the words "carcasses" and "remains", the former has been replaced with the latter wherever it appeared. Processing remains is the most appropriate way of disposing of them and complies with the law so long as neither the Bureau nor any individual receives compensation for conveying the remains. Although no compensation can be received for

transfer of the remains, once the remains have been sanitarily rendered in accordance with normal local or State standards, the renderer may sell the end products, which are no longer considered remains as used in the Act.

In response to one comment, the section has been amended to make it clear that the Bureau is not required to dispose of remains of animals that die on the open public range.

Section 4740.1 Use of motor vehicles or aircraft.

This section has been amended to reflect numerous comments stating generally that management activities should be conducted in a humane manner, and to clarify that a public hearing shall be held before using helicopters or motor vehicles in the management of wild horses and burros.

Section 4740.2 Standards for vehicles used for transport of wild horses and burros.

Two comments urged that this section be amended to provide specific standards for head room in horse trailers and to require that food given to animals in transit be compatible with what they are accustomed to. Such specificity is unnecessary in these regulations. Bureau personnel are trained to judge whether trailers are suitable for transporting individual animals, and allowing feed rations to change while remaining adequate may help adopted animals adjust to their new environments.

Section 4750.2-1 Health and identification requirements.

One comment suggested that verification of an animal's soundness and health, required in paragraph (a) of this section, should be obtained from a licensed veterinarian. This recommendation would eliminate the possibility of obtaining a verification from other qualified individuals. Another comment recommended that the provision for tests, immunizations, and worming be removed from the rulemaking because they are not required by Federal law. These tests may not be required by Federal law, but are required by the laws of many of the public land States. Neither recommendation has been adopted in the final rulemaking.

One comment sought the removal of the provision in paragraph (c) for freeze-marking unweaned foals, because of possible stress on the young animals and because of doubt as to their status as free-roaming if born after their dams have been rounded up. This comment has not been adopted in the final rulemaking. Foals born in captivity but before their dams are adopted into private maintenance are considerd free-roaming for purposes of these regulations. Also, while freeze-marking may involve some stress, it is the most humane and cost-efficient way of providing the necessary identification of these animals.

Section 4750.3-1 Application for private maintenance of wild horses and burros.

Several comments urged that the provision for a nonrefundable filing fee to accompany the application be removed from the regulations, on the grounds that imposing a fee would tend to discourage adoptions. The recommendation is adopted in the final rulemaking.

Section 4750.3-2 Qualification standards for private maintenance.

One comment address paragraph (a)(1) of this section, asking that legal age be determined by where an applicant is a citizen or permanent resident. To avoid the confusion inherent in making this kind of determination, the provision has been amended in the final rulemaking to require only that the applicant be at least 18 years old.

One comment requested that the rulemaking state the minimum acceptable standards for facilities for animals in private maintenance. Paragraph (a)(3) has been rewritten to state those standards.

Section 4750.3-3 Supporting information and certification for private maintenance of more than 4 wild horses and burros.

The opening paragraph of § 4750.3-3(a) has been rewritten for purposes of clarification and stricter compliance with the judicial settlement in *American Horse Protection Association, Inc., et al v. Watt, et al* (the AHPA settlement). The amendment makes it clear that the facilities must be physically inspected by a person determined by the authorized officer to be qualified.

Paragraph (a)(1) of this section has been amended to cross-refer to the standards contained in the previous section, in order to make clear the responsibilities of those seeking to adopt more than 4 horses or burros. Paragraph (b) has been rewritten to be more consistent with the AHPA settlement. In the final rulemaking this paragraph makes it clear that the required information is to be provided by holders of powers of attorney to adopt animals on behalf of members of a group.

Section 4750.4-1 Private Maintenance and Care Agreement.

Paragraphs (b), (c), and (d) of this section have been removed in the final rulemaking, and the remaining paragraphs redesignated, to eliminate duplication between the provisions stated in the agreement required by this section and the acts prohibited in § 4770.1.

One comment suggested that paragraph (e) of the proposed rulemaking be amended to prohibit long-term or indefinite as well as permanent transfers of adopted animals without prior approval by the authorized officer. This comment has been adopted in the final rulemaking in paragraph (b) by imposing a 30-day limit on transfers without such prior approval.

One comment suggested that adopters be given a definite time within which an animal must be made available for inspection after written request by the authorized office under paragraph (f). This recommendation has been adopted in the final rulemaking by imposing a 7-day deadline.

Two comments suggested that paragraph (g) of the proposed rulemaking ((d) in this final rulemaking) be amended to require a veterinarian's certificate in all cases of the death of an adopted animal. This suggestion has not been adopted in the final rulemaking, but it remains within the discretion of the authorized officer to require such a certificate.

One comment requested more specificity in paragraph (h) of this section in the proposed rulemaking. In response, the paragraph has been amended to make it clear that it is the adopter's financial responsibility to care for animals covered by the Private Maintenance and Care Agreement. New paragraphs have been added to clarify that the adopter is responsible for managing adopted animals, for damages cause by them, for rounding up strays, and for disposal of dead animals. In response to a comment, a requirement has been added that the adopter notify the authorized office of any change of address.

Section 4750.4-2 Adoption fee.

Paragraph (a) of this section has been amended in the final rulemaking to conform to the amendment of § 4750.3-1, which removed the application fee. An editorial change has also been made to make it clear that only unweaned foals are not subject to the adoption fee.

Section 4750.4-3 Request to terminate Private Maintenance and Care Agreement.

In response to a comment, this section has been amended to clarify that adopted animals may be transferred directly to a new adopter, with the approval of the authorized officer, and that the officer need not take physical possession of animals involved in such transfers.

Section 4750.4–4 Replacement animals.

One comment from a Bureau field office suggested shortening from 60 to 10 days the period within which an adopter can obtain an animal to replace one that has died or had to be destroyed due to a condition that existed at the time of adoption. This suggestion was not adopted. Instead, because some conditions that may cause death after a 60-day period may have existed at the time of adoption, this section has been amended to extend the time to 6 months.

Section 4750.5 Application for title to wild horses and burros.

Several comments objected to the provision in paragraph (a) of this section allowing adopters to acquire title to more than 4 animals in one year as not being supported by section 1333(c) of the Act. The provision has been removed in the final rulemaking.

One comment requested that paragraph (b) of this section be amended to state in some detail the required contents of the veterinarian's statement to be supplied by the applicant for title. In response to this comment, the word "humane" has been inserted in front of "treatment," so that the required certification will incorporate the elements listed in the definition (§ 4700.0–5(g)) of "human treatment," i.e., handling compatible with standard animal husbandry practices.

Another change has been made in the final rulemaking affecting title application. Application for title has been incorporated in the adoption process so that an adopter applies for title to an animal automatically at the time the Private Maintenance and Care Agreement is signed. The final sentence of the paragraph has been removed as redundant.

Section 4760 Compliance with the Private Maintenance and Care Agreement.

A new paragraph (b) has been added to this section to conform it to the terms of the settlement in *American Horse Protection Association v. Watt.* Paragraph (b) requires the authorized officer to verify compliance with the Private Maintenance and Care Agreement when one adopter has acquired 25 or more animals, or 25 or more are maintained in one place.

One comment pointed out that paragraph (b) of this section in the proposed rulemaking (relettered (c) in the final rulemaking), when read in conjunction with § 4750.4–1(f), requires the authorized officer investigating a complaint about the care, treatment, or use of an adopted animal to notify the adopter in writing before inspecting the animal or the facilities where it is maintained. This is a correct statement of the requirement, which is not changed in the final rulemaking. However, the authorized officer may enlist the assistance of Federal or local law enforcement authorities, who may with proper cause obtain a search warrant and investigate without such warning.

Section 4770.1 Prohibited acts.

One comment stated that paragraph (a) of this section demonstrates the need for a definition of "malicious harassment," and another stated that the prohibition in this paragraph would be very hard to enforce because of the difficulty of proving malicious intent. The paragraph has been amended to prohibit negligent as well as malicious injury of a wild horse or burro.

The separate prohibition against using a wild horse or burro for bucking stock has been removed from the final rulemaking. Any use considered to be inhumane is already prohibited in § 4770.1(e), and use that takes advantage of an animal's characteristic of wildness is prohibited in § 4770.1(e).

A paragraph has been added to this section prohibiting the violation of orders, terms, or conditions established by the authorized officer. Other changes of an editorial nature have been made.

Section 4770.2 Civil penalties

In response to several comments that this section singled out holders of grazing permits for discriminatory treatment, paragraph (a) of this section has been amended to apply to all permittees or lessees on the pubic lands.

The principal author of this final rulemaking is John S. Boyles, Division of Wild Horses and Burros, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). A limited number of veterinarians, cooperative extension agents, and humane officials may be insignificantly affected by the rulemaking. The certification required for adopters to receive title is needed on a nonrecurring basis. The changes allow adopters discretion to choose the official from whom they obtain a certification, resulting in some cost savings. Adopters are required to pay a fee to obtain the animals and to provide information to show their ability to provide humane transport, facilities, and care for the animals. An insignificant number of individuals may be deterred from participating because of the fee or qualification standards for humane care.

Information collection requirements for administering these regulations have been approved by the Office of Management and Budget and assigned clearance number 1004–0042.

List of Subjects in 43 CFR Part 4700

Advisory committees, Aircraft, Intergovernmental relations, Penalties, Public lands, Range management, Wild horses and burros, Wildlife.

Under the provisions of the Act of September 8, 1959 (18 U.S.C. 47), the Act of December 15, 1971, as amended (16 U.S.C. 1331–1340), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and the Act of June 28, 1934, as amended (43 U.S.C. 315), Part 4700, Subchapter D, Chapter II, Title 43 of the Code of Federal Regulations is revised to read as set forth below.

Dated: February 7, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

GROUP 4700—WILD FREE-ROAMING HORSE AND BURRO MANAGEMENT

Note.—The information collection requirements contained in Group 4700 have been approved by the Office of Management and Budget and assigned clearance number 1004–0042. The information is being collected to permit the authorized officer to remove wild horses and burros from private land and to determine whether an application for adoption of and title to wild horses or burros should be granted. Responses are required to obtain benefits.

PART 4700—PROTECTION, MANAGEMENT, AND CONTROL OF WILD FREE-ROAMING HORSES AND BURROS

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4720.2-2 Removal of excess animals from private lands.

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Subpart 4760—Compliance

4760.1 Compliance with the Private Maintenance and Care Agreement.

Subpart 4770—Prohibited Acts, Administrative Remedies, and Penalties

4770.1 Prohibited acts.
4770.2 Civil penalties.
4770.3 Administrative remedies.
4770.4 Arrest.
4770.5 Criminal penalties.

Authority: Act of Dec. 15, 1971, as amended (16 U.S.C. 1331-1340). Act of Oct. 21, 1976 (43 U.S.C. 1701 et seq.). Act of Sept. 8, 1959 (18 U.S.C. 47). Act of June 28, 1934 (43 U.S.C. 315).

Subpart 4700—General

§ 4700.0-1 Purpose.

The purpose of these regulations is to implement the laws relating to the protection, management, and control of wild horses and burros under the administration of the Bureau of Land Management.

§ 4700.0-2 Objectives.

The objectives of these regulations are management of wild horses and burros as an integral part of the natural system of the public lands under the principle of multiple use; protection of wild horses and burros from unauthorized capture, branding, harassment or death; and humane care and treatment of wild horses and burros.

§ 4700.0-3 Authority.

The Act of September 8, 1959 (18 U.S.C. 47); the Act of December 15, 1971, as amended (16 U.S.C. 1331-1340); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711, 1712, and 1734); the Act of June 28, 1934, as amended (43 U.S.C. 315); and the National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331-4335, and 4341-4347).

§ 4700.0-5 Definitions.

As used in this part, the term:

(a) "Act" means the Act of December 15, 1971, as amended (16 U.S.C. 1331-1340), commonly referred to as the Wild Free-Roaming Horse and Burro Act.

(b) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described herein.

(c) "Commercial exploitation" means using a wild horse or burro because of its characteristics of wildness for direct or indirect financial gain. Characteristics of wildness include the rebellious and feisty nature of such animals and their defiance of man as exhibited in their undomesticated and untamed state. Use as saddle or pack stock and other uses that require domestication of the animal are not commercial exploitation of the animals because of their characteristics of wildness.

(d) "Herd area" means the geographic area identified as having been used by a herd as its habitat in 1971.

(e) "Humane treatment" means handling compatible with animal husbandry practices accepted in the veterinary community, without causing unnecessary stress or suffering to a wild horse or burro.

(f) "Inhumane treatment" means any intentional or negligent action or failure to act that causes stress, injury, or undue suffering to a wild horse or burro and is not compatible with animal husbandry practices accepted in the veterinary community.

(g) "Lame wild horse or burro" means a wild horse or burro with one or more malfunctioning limbs that permanently impair its freedom of movement.

(h) "Old wild horse or burro" means a wild horse or burro characterized because of age by its physical deterioration and inability to fend for itself, suffering, or closeness to death.

(i) "Private maintenance" means the provision of proper care and humane treatment to excess wild horses and burros by qualified individuals under the terms and conditions specified in a Private Maintenance and Care Agreement.

(j) "Public lands" means any lands or interests in lands administered by the Secretary of the Interior through the Bureau of Land Management.

(k) "Sick wild horse or burro" means a wild horse or burro with failing health, infirmity or disease from which there is little chance of recovery.

(l) "Wild horses and burros" means all unbranded and unclaimed horses and burros that use public lands as all or part of their habitat, or that have been removed from these lands by the authorized officer but have not lost their status under section 3 of the Act. Where it appears in this part the term "wild horses and burros" is deemed to include the term "free-roaming".

§ 4700.0-6 Policy.

(a) Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat.

(b) Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans.

(c) Management activities affecting wild horses and burros shall be undertaken with the goal of maintaining free-roaming behavior.

(d) In administering these regulations, the authorized officer shall consult with Federal and State wildlife agencies and all other affected interests, to involve them in planning for and management of wild horses and burros on the public lands.

(e) Healthy excess wild horses and burros for which an adoption demand by qualified individuals exists shall be made available at adoption centers for private maintenance and care.

(f) Fees shall normally be required from qualified individuals adopting

ess wild horses and burros to defray t of the costs of the adoption program.

Subpart 4710—Management Considerations

§ 4710.1 Land use planning.

Management activities affecting wild horses and burros, including the establishment of herd management areas, shall be in accordance with approved land use plans prepared pursuant to Part 1600 of this title.

§ 4710.2 Inventory and monitoring.

The authorized officer shall maintain a record of the herd areas that existed in 1971, and a current inventory of the numbers of animals and their areas of use. When herd management areas are established, the authorized officer shall also inventory and monitor herd and habitat characteristics.

§ 4710.3 Management areas.

§ 4710.3-1 Herd management areas.

Herd management areas shall be established for the maintenance of wild horse and burro herds. In delineating each herd management area, the authorized officer shall consider the ropriate management level for the d, the habitat requirements of the mals, the relationships with other uses of the public and adjacent private lands, and the constraints contained in § 4710.4. The authorized officer shall prepare a herd management area plan, which may cover one or more herd management areas.

§ 4710.3-2 Wild horse and burro ranges.

Herd management areas may also be designated as wild horse or burro ranges to be managed principally, but not necessarily exclusively, for wild horse or burro herds.

§ 4710.4 Constraints on management.

Management of wild horses and burros shall be undertaken with the objective of limiting the animals' distribution to herd areas. Management shall be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans.

§ 4710.5 Closure to livestock grazing.

(a) If necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros, to implement herd agement actions, or to protect wild es or burros from disease, rassment or injury, the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock.

(b) All public lands inhabited by wild horses or burros shall be closed to grazing under permit or lease by domestic horses and burros.

(c) Closure may be termporary or permanent. After appropriate public consultation, a Notice of Closure shall be issued to affected and interested parties.

§ 4710.6 Removal of unauthorized livestock in or near areas occupied by wild horses or burros.

The authorized officer may establish conditions for the removal of unauthorized livestock from public lands adjacent to or within areas occupied by wild horses or burros to prevent undue harassment of the wild horses or burros. Liability and compensation for damages from unauthorized use shall be determined in accordance with subpart 4150 of this title.

§ 4710.7 Maintenance of wild horses and burros on privately controlled lands

Individuals controlling lands within areas occupied by wild horses and burros may allow wild horses or burros to use these lands. Individuals who maintain wild free-roaming horses and burros on their land shall notify the authorized officer and shall supply a reasonable estimate of the number of such animals so maintained. Individuals shall not remove or entice will horses or burros from the public lands.

Subpart 4720—Removal

§ 4720.1 Removal of excess animals from public lands.

Upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove the excess animals immediately in the following order.

(a) Old, sick, or lame animals shall be destroyed in accordance with Subpart 4730 of this title;

(b) Additional excess animals for which an adoption demand by qualified individuals exists shall be humanely captured and made available for private maintenance in accordance with Subpart 4750 of this title; and

(c) Remaining excess animals for which no adoption demand by qualified individuals exists shall be destroyed in accordance with subpart 4730 of this title.

§ 4720.2 Removal of strayed or excess animals from private lands.

§ 4720.2-1 Removal of strayed animals from private lands.

Upon written request from the private landowner to any representative of the Bureau of Land Management, the authorized officer shall remove stray wild horses and burros from private lands as soon as practicable. The private landowner may also submit the written request to a Federal marshal, who shall notify the authorized officer. The request shall indicate the numbers of wild horses or burros, the date(s) the animals were on the land, legal description of the private land, and any special conditions that should be considered in the gathering plan.

§ 4720.2-2 Removal of excess animals from private lands.

If the authorized officer determines that proper management requires the removal of wild horses and burros from areas that include private lands, the authorized officer shall obtain the written consent of the private owner before entering such lands. Flying aircraft over lands does not constitute entry.

Subpart 4730—Destruction of Wild Horses or Burros and Disposal of Remains

§ 4730.1 Destruction.

Except as an act of mercy, no wild horse or burro shall be destroyed without the authorization of the authorized officer. Old, sick, or lame animals shall be destroyed in the most humane manner possible. Excess animals for which adoption demand does not exist shall be destroyed in the most humane and cost efficient manner possible.

§ 4730.2 Disposal of remains.

Remains of wild horses or burros that die after capture shall be disposed of in accordance with State or local sanitation laws. No compensation of any kind shall be received by any agency or individual disposing of remains. The products of rendering are not considered remains.

Subpart 4740—Motor Vehicles and Aircraft

§ 4740.1 Use of motor vehicles or aircraft.

(a) Motor vehicles and aircraft may be used by the authorized officer in all phases of the administration of the Act, except that no motor vehicle or aircraft, other than helicopters, shall be used for the purpose of herding or chasing wild horses or burros for capture or

destruction. All such use shall be conducted in a humane manner.

(b) Before using helicopters or motor vehicles in the management of wild horses or burros, the authorized officer shall conduct a public hearing in the area where such use is to be made.

§ 4740.2 Standards for vehicles used for transport of wild horses and burros.

(a) Use of motor vehicles for transport of wild horses or burros shall be in accordance with appropriate local, State and Federal laws and regulations applicable to the humane transportation of horses and burros, and shall include, but not be limited to, the following standards:

(1) The interior of enclosures shall be free from protrusion that could injure animals;

(2) Equipment shall be in safe conditions and of sufficient strength to withstand the rigors of transportation;

(3) Enclosures shall have ample head room to allow animals to stand normally;

(4) Enclosures for transporting two or more animals shall have partitions to separate them by age and sex as deemed necessary by the authorized officer;

(5) Floors of enclosures shall be covered with nonskid material;

(6) Enclosures shall be adequately ventilated and offer sufficient protection to animals from inclement weather and temperature extremes; and

(7) Unless otherwise approved by the authorized officer, transportation shall be limited in sequence to a maximum of 24 hours followed by a minimum of 5 hours of on-the-ground rest with adequate feed and water.

(b) The authorized officer shall not load wild horses or burros if he/she determines that the vehicle to be used for transporting the wild horses or burros is not satisfactory for that purpose.

Subpart 4750—Private Maintenance

§ 4750.1 Private maintenance.

The authorized officer shall make available for private maintenance all healthy excess wild horses or burros for which an adoption demand by qualified individuals exists.

§ 4750.2 Health, identification, and inspection requirements.

§ 4750.2-1 Health and identification requirements.

(a) An individual determined to be qualified by the authorized officer shall verify each excess animal's soundness and good health, determine its age and sex, and administer immunizations, worming compounds, and tests for communicable diseases.

(b) Documentation conforming compliance with State health inspection and immunization requirements for each wild horse or burro shall be provided to each adopter by the authorized officer.

(c) Each animal offered for private maintenance, including orphan and unweaned foals, shall be individually identified by the authorized officer with a permanent freeze mark of alpha numeric symbols on the left side of its neck. The freeze mark identifies the animal as Federal property subject to the provisions of the Act and these regulations by a patented symbol, the animal's year of birth, and its individual identification number. The authorized officer shall record the freeze mark on the documentation of health and immunizations. For purposes of this subpart, a freeze mark applied by the authorized officer is not considered a brand.

§ 4750.2-2 Brand inspection.

The authorized officer shall make arrangements on behalf of an adopter for State inspection of brands, where applicable, of each animal to be transported across the State where the adoption center is located. The adopter shall be responsible for obtaining inspections for brands required by other States to or through which the animal may be transported.

§ 4750.3 Application requirements for private maintenance.

§ 4750.3-1 Application for private maintenance of wild horses and burros.

An individual applying for a wild horse or burro shall file an application with the Bureau of Land Management on a form approved by the Director.

§ 4750.3-2 Qualification standards for private maintenance.

(a) To qualify to receive a wild horse or burro for private maintenance, an individual shall:

(1) Be 18 years of age or older;

(2) Have no prior conviction for inhumane treatment of animals or for violation of the Act or these regulations;

(3) Have adequate feed, water, and facilities to provide humane care to the number of animals requested. Facilities shall be in safe condition and of sufficient strength and design to contain the animals. The following standards apply:

(i) A minimum space of 144 square feet shall be provided for each animal maintained, if exercised daily; otherwise, a minimum of 400 square feet shall be provided for each animal;

(ii) Until fence broken, adult horses shall be maintained in an enclosure at least 6 feet high; burros in an enclosure at least 4½ feet high; and horses less than 18 months old in an enclosure at least 5 feet high. Materials shall be protrusion-free and shall not include large-mesh woven or barbed wire;

(iii) Shelter shall be available to mitigate the effects of inclement weather and temperature extremes. The authorized officer may require that the shelter be a structure, which shall be well-drained and adequately ventilated;

(iv) Feed and water shall be adequate to meet the nutritional requirements of the animals, based on their age, physiological condition and level of activity; and

(4) Have obtained no-more than 4 wild horses and burros within the preceding 12-month period, unless specifically authorized in writing by the authorized officer.

(b) The authorized officer shall determine an individual's qualifications based upon information provided in the application form required by § 4750.3-1 of this subpart and Bureau of Land Management records of any previous private maintenance by the individual under the Act.

§ 4750.3-3 Supporting information and certification for private maintenance of more than 4 wild horses or burros.

(a) An individual applying for more than 4 wild horses or burros within a 12-month period, or an individual or group of individuals requesting to maintain more than 4 wild horses or burros at a single location shall provide a written report prepared by the authorized officer, or by a local humane official, veterinarian, cooperative extension agent, or similarly qualified person approved by the authorized officer, verifying that the applicant's facilities have been inspected appear adequate to care for the number of animals requested, and satisfy the requirements contained in § 4750.3-2(a).

(1) The report shall include a description of the facilities, including corral sizes, pasture size, and shelter, barn, or stall dimensions, and shall note any discrepancies between the facilities inspected and representations made in the application form.

(2) When an applicant requests 25 or more animals or when 25 or more animals will be maintained at any single location regardless of the number of applicants, the facilities for maintaining the adopted animals shall be inspected by the authorized officer prior to approving the application.

(b) Any individual or group represented by a power of attorney and applying for more than 4 animals shall provide the following:

(1) A summary of the age, sex, and number of wild free-roaming horses or burros requested by species;

(2) Requested adoption date and center location;

(3) If applicable, names, addresses and telephone numbers of all applicants represented by a power of attorney submitted with the request;

(4) A transportation plan that describes the transport vehicle and any rest-stops;

(5) A distribution plan for delivering the animals to their assigned adopters;

(6) Names, addresses, and a concise summary of the experience of the individuals who will handle the adopted animals during transportation and distribution; and

(7) When the adopted animals will be maintained at a single location or where the applicants have been solicited by the holder of their power of attorney, a concise statement outlining the arrangements, including duties and responsibilities of the parties, for maintaining the animals.

§ 4750.3-4 Approval or disapproval of applications.

If an application is approved, the authorized officer shall offer the individual an opportunity to select the appropriate number, sex, age and species of animals from those available. If the authorized officer disapproves an application for private maintenance because the applicant lacks adequate facilities or transport, the individual may correct the shortcoming and file a new application.

§ 4750.4 Private maintenance of wild horses and burros.

§ 4750.4-1 Private Maintenance and Care Agreement.

To obtain a wild horse or burro, a qualified applicant shall execute a Private Maintenance and Care Agreement and agree to abide by its terms and conditions, including but not limited to the following:

(a) Title to wild horses and burros covered by the agreement shall remain in the Federal Government for at least 1 year after the Private Maintenance and Care Agreement is executed and until a Certificate of Title is issued by the authorized officer.

(b) Wild horses and burros covered by the agreement shall not be transferred for more than 30 days to another location or to the care of another individual without the prior approval of the authorized officer;

(c) Wild horses and burros covered by the agreement shall be made available for physical inspection within 7 days of receipt of a written request by the authorized officer;

(d) The authorized officer shall be notified within 7 days of discovery of the death, theft or escape of wild horses and burros covered by the agreement;

(e) Adopters are financially responsible for the proper care and treatment of all wild horses and burros covered by the agreement.

(f) Adopters are responsible, as provided by State law, for any personal injury, property damage, or death caused by animals in their care; for pursing animals that escape or stray; and for costs of recapture.

(g) Adopters shall notify the authorized officer within 30 days of any change in the adopter's address; and

(h) Adopters shall dispose of remains in accordance with applicable sanitation laws.

§ 4750.4-2 Adoption fee.

(a) An individual obtaining wild horses and burros shall pay the Bureau of Land Management an adoption fee of $125 per horse and $75 per burro, except that no fee shall be paid for unweaned foals.

(b) The Director may adjust or waive the adoption fee on determining that wild horses or burros in the custody of the Bureau of Land Management are unadoptable when the full adoption fee is required, and that it is in the public interest to adjust or waive the adoption fee stated in paragraph (a) of this section. The adjustment or waiver shall extend only to those persons who are willing to maintain such animals privately, who demonstrate the ability to care for them properly, and who agree to comply with all rules and regulations relating to wild horses and burros.

§ 4750.4-3 Request to terminate Private Maintenance and Care Agreement.

An adopter may request to terminate his/her responsibility for an adopted animal by submitting a written relinquishment of the Private Maintenance and Care Agreement for that animal. The authorized officer shall arrange to transfer the animal to another qualified applicant or take possession of the animal at a location specified by the authorized officer within 30 days of receipt of the written request for relinquishment.

§ 4750.4-4 Replacement animals.

The authorized officer shall replace an animal, upon request by the adopter, if (a) within 6 months of the execution of the Private Maintenance and Care Agreement the animal dies or is required to be destroyed due to a condition that existed at the time of placement with the adopter; and (b) the adopter provides, within a reasonable time, a statement by a veterinarian certifying that reasonable care and treatment would not have corrected the condition. Transportation of the replacement animal shall be the responsibility of the adopter.

4750.5 Application for title to wild horses and burros.

(a) The adopter shall apply for title, using a form designated by the Director, upon signing the Private Maintenance and Care Agreement.

(b) The authorized officer shall issue a Certificate of Title after 12 months, if the adopter has complied with the terms and conditions of the agreement and the authorized officer determines, based either on a field inspection or a statement provided by the adopter from a veterinarian, extension agent, local humane official, or other individual acceptable to the authorized officer, that the animal or animals covered by the Agreement have received proper care and humane treatment.

(c) An adopter may not obtain title to more than 4 animals per 12-month period of private maintenance. Effective the date of issuance of the Certificate of Title, Federal ownership of the wild horse or burro ceases and the animal loses its status as a wild horse or burro and is no longer under the protection of the Act or regulations under this title.

Subpart 4760—Compliance

§ 4760.1 Compliance with the Private Maintenance and Care Agreement.

(a) An adopter shall comply with the terms and conditions of the Private Maintenance and Care Agreement and these regulations. The authorized officer may verify compliance by visits to an adopter, physical inspections of the animals, and inspections of the facilities and conditions in which the animals are being maintained. The authorized officer may authorize a cooperative extension agent, local humane official or similarly qualified individual to verify compliance.

(b) The authorized officer shall verify compliance with the terms of the Private Maintenance and Care Agreement when an adopter has received 25 or more animals or when 25 or more animals are maintained at a single location.

(c) The authorized officer shall conduct an investigation when a complaint concerning the care, treatment, or use of a wild horse or

burro is received by the Bureau of Land Management.

(d) The authorized officer may require, as a condition for continuation of a Private Maintenance and Care Agreement, that an adopter take specific corrective actions if the authorized officer determines that an animal is not receiving proper care or is being maintained in unsatisfactory conditions. The adopter shall be given reasonable time to complete the required corrective actions.

Subpart 4770—Prohibited Acts, Administrative Remedies, and Penalties

§ 4770.1 Prohibited acts.

The following acts are prohibited:

(a) Maliciously or negligently in juring or harassing a wild horse or burro;

(b) Removing or attempting to remove a wild horse or burro from the public lands without authorization from the authorized officer;

(c) Destroying a wild horse or burro without authorization from the authorized officer except as an act of mercy;

(d) Selling or attempting to sell, directly or indirectly, a wild horse or burro or its remains;

(e) Commercially exploiting a wild horse or burro;

(f) Treating a wild horse or burro inhumanely;

(g) Violating a term or condition of the Private Maintenance and Care Agreement;

(h) Branding a wild horse or burro;

(i) Removing or altering a freeze mark on a wild horse or burro;

(j) Violating an order, term, or condition established by the authorized officer under this part.

§ 4770.2 Civil penalties.

(a) A permittee or lessee who has been convicted of any of the prohibited acts found in § 4770.1 of this title may be subject to suspension or cancellation of the permit or lease.

(b) An adopter's failure to comply with the terms and conditions of the Private Maintenance and Care Agreement may result in the cancellation of the agreement, repossession of wild horses and burros included in the agreement and disapproval of requests by the adopted for additional excess wild horses and burros.

§ 4770.3 Administrative remedies.

Any person who is adversely affected by a decision of the authorized officer in the administration of these regulations may file an appeal in accordance with 43 CFR 4.4 within 30 days of receipt of the written decision.

§ 4770.4 Arrest.

The Director of the Bureau of Land Management may authorize an employee who witnesses a violation of the Act or these regulations to arrest without warrant any person committing the violation, and to take the person immediately for examination or trial before an officer or court of competent jurisdiction. Any employee so authorized shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of the Act or these regulations.

§ 4770.5 Criminal penalties.

Any person who commits any act prohibited in § 4770.1 of these regulations shall be subject to a fine of not more than $2,000 or imprisonment for not more than 1 year, or both, for each violation. Any person so charged with such violation by the authorized officer may be tried and sentenced by a United States Commissioner or magistrate, designated for that purpose by the court by which he/she was appointed, in the same manner and subject to the same conditions as provided in 18 U.S.C. 3401.

[FR Doc. 86-4532 Filed 2-28-86; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2720

[Circular No. 2578]

Conveyance of Federally-Owned Mineral Interests; Amendment to the Conveyance Procedure

PART 2720—[AMENDED]

Under the authority of sections 209 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719, 1740), Part 2720, Group 2700, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

1. The "Note" appearing immediately after the heading for Group 2700 is revised to read:

Note.—The information collection requirements contained in Parts 2720 and 1740 of Group 2700 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0153 and 1004–0012, respectively. The information is being collected to permit the authorized officer to determine if disposition of Federally-owned mineral interests should be made and to determine if disposition of public lands should be made for recreation and public purposes. This information will be used to make these determinations. A response is required to obtain a benefit.

2. The authority citation for part 2720 continues to read:

Authority: Secs. 209 and 310 of Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)

§ 2720.0–5 [Amended]

3. Section 2720.0–5 is amended by adding a new paragraph (d) to read:

(d) Proof of ownership means evidence of title acceptable in local realty practice by attorneys and title examiners and may include a current title attorney's opinon, based on a current abstract of title prepared by a bonded title insurance or title abstract company doing business in the locale where the lands are located.

4. A new section 2720.0–6 is added to read:

§ 2720.0–6 Policy.

As required by the Federal Land Policy and Management Act, conveyance of federally reserved mineral interest shall be made only upon a determination of no know value or if it can be clearly demonstrated that the mineral reservation is interfering with or precluding appropriate nonmineral development of the lands and that nonmineral development is a more beneficial use than mineral development. Allegation, hypothesis or speculation that such conditions could or may exist at some future time shall not be sufficient basis for conveyance. Failure to establish by convincing factual evidence that the requisite conditions of interference or preclusion presently exist, and that nonmineral development is a more beneficial use, shall result in the rejection of an application.

§ 2720.1–1 [Amended]

5. Section 2720.1–1 is amended by designating the introductory text as paragraph (a), redesignating the existing paragraphs (a) and (b) as paragraphs (a)(1) and (2) and adding a new paragraph (b) to read:

(b) Publication in the Federal Register of a notice of the filing of an application under this part shall segregate the mineral interests owned by the United States in the public lands covered by the application to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance to such mineral interests, upon final rejection of the application or 2 years from the date of filing of the application which ever occurs first.

§ 2720.1–2 [Amended]

6. Section 2720.1–2(d)(3) is amended by removing the phrase "to the applicant; and" at the end thereof and replacing it with the phase "and a showing of ownership in the applicant, with supporting survey evidence acceptable to the authorized officer, which may consist of a metes and bounds survey prepard and certified by a civil engineer or land surveyor licensed under the laws of the State in which the lands are located; and".

§ 2720.1–3 [Amended]

7. Section 2720.1–3 is amended by:

A. Amending paragraph (b)(2) by removing from where it appears in the first sentence thereof the phrase "after he has obtained the approval of the U.S. Geological Survey" and by removing from where it appears in the second sentence thereof the phrase "locatable and saleable minerals prepared by the Bureau of Land Management and mineral resources evaluation reports on leasable minerals prepared by the U.S. Geological Survey" and replace it with the phrase "minerals prepared by the Bureau of Land Management";

B. Amending paragraph (c) by removing from where it appears the phrase "after having obtained the approval of the U.S. Geological Survey";

C. Amending paragraph (d) by removing from where it appears the phrase", with the approval of the U.S. Geological Survey,"; and

D. Amending paragraph (e) by removing from where it appears in the first sentence the phrase", after the authorized officer has obtained the approval of the U.S. Geological Survey", by removing from where it appears in seventh sentence the phrase "and with the approval of the plan of operations by the U.S. Geological Survey" and by also removing the phrase "and the U.S. Geological Survey", and by removing from where it appears in the eleventh sentence the phrase "leasable mineral resources to the U.S. Geological Survey and that needed for determination of the economic value of locatable and salable mineral resources" and replace it with the phrase "mineral resources".

February 24, 1986

J. Steven Griles,
Assistant Secretary of the Interior.

[FR Doc. 86–6102 Filed 3–19–86; 8:45 am]

Published in 51 F.R. 9655, March 20, 1986 - Effective April 21, 1986

#2578

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternate approach involving the least net cost to society.

List of Subjects

41 CFR Part 101-25

Energy conservation, Government property management, Reporting and record keeping requirements.

41 CFR Part 101-26

Government property management.

Title 41 Parts 101-25 and 101-26 of the code of Federal Regulations are amended as follows:

PART 101-25—GENERAL

1. The authority citation for 41 CFR Part 101-25 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

2. The table of contents for Part 101-25 is amended by removing the following entries:

Subpart 101-25.3—Use Standards

Sec.
101-25.303 [Removed]
101-25.304 [Removed]
101-25.304-1 [Removed]
101-25.304-2 [Removed]

§§101-25.303, 101-25.304, 101-25.304-1, 101-25.304-2 [Removed]

3. Sections 101-25.303, 101-25.304, 101-25.304-1, and 101-25.304-2 are removed.

PART 101-26—PROCUREMENT SOURCES AND PROGRAMS

4. The authority citation for 41 CFR Part 101-26 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

5. The table of contents for Part 101-26 is amended by removing the following entries:

Subpart 101-26.4—Purchase of Items From Federal Supply Schedule Contracts

Sec.
101-26.406 [Removed]
101-26.406-1 [Removed]
101-26.406-2—101-26.406-4 [Removed]
101-26.406-5 [Removed]
101-26.406-6 [Removed]

101-26.406, 101-26.406-1, 101-26.406-2—101-26.406-4, 101-40-5, 101-26-406-6 [Removed]

6. Sections 101-26.406, 101-26.406-1, 101-26.406-2—101-26.406-4, 101-26.406-5, and 101-26.406-6 are removed.

Dated: February 26, 1986.

T.C. Golden,

Administrator of General Services.

[FR Doc. 86-6051 Filed 3-19-86; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2720

[Circular No. 2578]

Conveyance of Federally-Owned Mineral Interests; Amendment to the Conveyance Procedure

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the existing regulations on conveyance of federally-owned mineral interests by simplifying the processing of applications to acquire the federally-owned mineral interests. These changes, for the most part, are derived from experience gained in implementing the existing regulations.

EFFECTIVE DATE: April 21, 1986.

ADDRESS: Suggestions or inquiries should be sent to: Director (320), Bureau of Land Management, Main Interior Bldg., Room 3643, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: David Hemstreet (202) 343-8693.

SUPPLEMENTARY INFORMATION: Proposed rulemaking amending the existing regulations on conveyance of federally-owned mineral interests was published in the **Federal Register** on February 7, 1985 (50 FR 5269), with a 60-day comment period. During the comment period, comments were received from 12 sources, 4 from business interests, 6 from Federal agencies and 2 from private nonprofit organizations.

General Comments

The comments generally were favorable to the changes made by the proposed rulemaking, with several of the comments recommending changes to sections of the existing regulations that were not included in the proposed rulemaking. The recommended changes to sections of the existing regulations not considered by the proposed rulemaking cannot be made part of the final rulemaking because the public has not had an opportunity to review and comment on the changes, but those changes will be considered during any future amendment of part 2720.

One general comment asked what effect this rulemaking would have on pending applications. The changes made by the proposed rulemaking and adopted by this final rulemaking will be applicable to all pending applications, except those that have essentially been completed, and the issuance of a patent is all that remains to vest title to the federally-owned mineral interests in the surface owner. Except for the provision for the segregation of lands covered by an application, the amendments covered by this rulemaking are clarifications of the existing regulations and make only minor changes in the processing procedure for an application. Therefore, the final rulemaking would have little impact on the processing of pending applications.

Four comments suggested that the definition of the term "known mineral values" found in § 2720.0-5(b) of the existing regulations is too ambiguous and should be amended. The suggestions for amendment ranged from changing two words in the existing text to a total revision of the definition. Since this defintion was not included in the proposed rulemaking, no change has been made in it in the final definition. In response to the comments, the definition of this term will be reviewed and, if appropriate, a change will be made the next time Part 2720 is amended.

As a streamlining measure, one comment recommended that the final rulemaking provide that a $500 deposit be required with each application which would eliminate the need for the authorized officer to request a deposit after the application is filed. This requirement would be a substantive change in the existing regulations, a change that would require public comment before its adoption. Since the provision was not included in the proposed rulemaking for public review and comment, it cannot be included in the final rulemaking.

Another comment suggested that the final rulemaking include a definition of the term "nominal value". In classifying lands as prospectively valuable for a mineral, it is recognized that the degree of value may range from zero to a near certainty, depending on such factors as the nature of the rocks on the lands, extent of dissection by erosion and proximity to production or previously drilled exploratory holes. The term "nominal" as used by the Department of the Interior in relation to mineral value, since at least 1967, denotes a degree of value near the zero end of the scale. Since the determination of nominal value is a matter of judgment, it is appropriate that the standard used in reaching that judgment be included in the Bureau of Land Management Manual, rather than including it in the regulations. The final rulemaking has not adopted this suggestion.

Two comments suggested that the regulations should contain separate guidelines for use in connection with locatable, salable and leasable minerals. Those offering the comments expressed the view that the term "prospectively valuable" was being misused: (1) When assessing locatable minerals; (2) in situations where there is no market for salable minerals; and (3) the presumption of value of leasable minerals derived from generalized maps of sedimentary basins without regard to more specific factual information. This suggestion is being considered for inclusion in the Bureau of Land Management manuals, where it is more appropriate. The final rulemaking has not adopted the suggestion.

Specific Comments

One comment suggested a change in the definition of the term "proof of ownership" contained in the proposed rulemaking. The comment made the point that the only information needed is the identity of the surface owner of record which could be met by a certified copy of a document from the county tax assessor showing the current surface owner of record. The key element in the definition of the term "proof of ownership" is the phrase ". . . evidence of title acceptable in local realty practice by attorneys and title examiners. . . ." The remainder of the definition is only one form of evidence that is universally acceptable. The definition does not attempt to include all such acceptable documents. If a certification by the county tax assessor showing the current surface owner of record is acceptable to attorneys and title examiners in local realty practice, it will meet the requirements of the definition. The final rulemaking has not adopted the suggested change.

All of the comments pointed out that the Federal Land Policy and Management Act provides for the conveyance of federally reserved mineral interests that do not contain known mineral values without a determination of interference or beneficial use. This point is well taken and the final rulemaking has been corrected to properly reflect the law. One of the comments suggested that the final rulemaking should contain more discussion of and a definition of what constitutes interference or preclusion. The comment questioned whether nonmineral development included the use of lands for plant sites, waste dumps, tailing sites, etc. The comment went on to ask how much discretion does the authorized officer have in making the determination of interference or preclusion? Each case will be unique, with a different set of facts, making it impractical to attempt to define what constitutes interference or preclusion so that it covers every case. The facts presented with an application dictate the action to be taken by the authorized officer, with his decision of whether interference or preclusion exists being dependent upon those facts. Mineral extraction plant sites, waste dumps, tailing sites and other such mining related activities would not be considered nonmineral development. Sale of federally reserved mineral interests of known value would be inappropriate for these purposes. Such development should be placed on lands having no known mineral value. If a surface owner insists upon placing such facilities on lands with known mineral values that have been reserved by the United States, it will be at that surface owner's risk.

A comment suggested that the word "hypothecation" that appears in § 2720.6 of the proposed rulemaking be changed to the word "hypothesis" in the final rulemaking. The comment pointed out that the word "hypothecation" means to pledge without delivery of title and is not appropriate. The suggestion is well taken and the final rulemaking contains the word "hypothesis".

A final comment on the policy section of the proposed rulemaking asked whether the proposed rulemaking dealt only with sale of federally reserved mineral interests or included exchanges of such interests. The proposed and final rulemakings cover only the sale of federally reserved mineral interests, with the exchange of public lands and the interests therein, including mineral interests, covered by the regulations in 43 CFR Part 2200.

A comment on the provisions of § 2720.1-1 of the proposed rulemaking suggested that the final rulemaking be amended to simply state that pending the issuance of the conveyance document for the mineral interests, the mineral interests will not be available for leasing. The comment reasoned that the term "segregate" had a special meaning in the oil and gas program of the Bureau of Land Management, which is to separate or divide a lease. The term "segregate" is used throughout the various Parts of Subchapter B of Title 43 of the Code of Federal Regulations with a meaning that is consistent with its use in the proposed rulemaking; therefore, the final rulemaking makes no change in its use of the term.

A comment recommended that the final rulemaking contain language specifically requiring that the applicant pay the cost of publication of the notice of realty action. This recommendation has not been adopted by the final rulemaking because §§ 2720.1-3(b) and 2720.3(a) of the existing regulations make the applicant responsible for all administrative costs incurred by the United States in connection with the processing of an application for the conveyance of federally-owned mineral interests.

A comment stated that publication in the Federal Register was not necessary to effect segregation of the interest in lands covered by the application. The comment went on to suggest that the final rulemaking provide that segregation became effective upon filing of an application for conveyance of federally-owned mineral interests. The final rulemaking has made no change in the publication requirement because the segregation of lands without proper publication has been criticized in the past as being inconsistent with section 5 of the Federal Register Act (44 U.S.C. 1505). Publication of the notice of segregation in the Federal Register assures that constructive notice is given to all parties of interest.

One comment interpreted the segregation provision of the proposed rulemaking as segregating the lands covered by an application from all forms of application, including conveyance of federally-owned mineral interests applications. Since the notice segregating the federally-owned mineral interests will be published after receipt of an application, the filing of the application will have no segregative effect. No change has been made in the final rulemaking in response to this comment.

Several comments opposed the requirement in the proposed rulemaking for a metes and bounds survey because it was an unnecessary departure from longstanding procedure and precedent. It was suggested that there may be gaps and overlaps between metes and bounds descriptions that would be unmanageable. These comments also expressed the view that the use of legal subdivisions and aliquot parts is subject to the least amount of error. Section 209(b) of the Federal Land Policy and Management Act (43 U.S.C. 1719(b)) provides for the conveyance of federally-owned mineral interests only to the existing or proposed record owner of the surface. While the use of legal subdivisions and aliquot parts is normally the method used to describe ownership, there are situations where a metes and bounds description in the only accurate way to describe ownership. This is especially true when lands are divided and sold by metes and bounds descriptions. The final rulemaking has been amended to require that the survey evidence be acceptable to the authorized officer. Any survey evidence submitted will be reviewed by the Chief of Cadastral Survey for the State to make certain that the description closes and does not overlap other lands that are not owned by the applicant.

A final comment on the requirement in the proposed rulemaking for survey evidence suggested that the language be changed from ". . . and a showing in the applicant. . ." to ". . . and a showing by the applicant. . . ." This suggestion has not been adopted by the final rulemaking because the word "in" modifies the word "ownership" and the preferred usage is to say ownership in rather than ownership by.

Four of the comments strongly suggested retention of the 90-day period during which the authorized officer is to determine whether an application meets the requirements for further processing and to determine the amount of the deposit required and so inform the applicant. Those comments expressed the view that the 90-day requirement is the only thing in the regulations that assures an applicant of prompt consideration of an application. The final rulemaking retains the 90-day requirement now contained in the existing regulations.

One of the comments on § 2720.1-3 of the proposed rulemaking suggested that the references to the U.S. Geological Survey contained in the section be deleted because the functions described are now handled by the Bureau of Land Management. The final rulemaking has adopted this suggestion because the change is an administrative recognition of changes in the functions of the two bureaus that have already occurred.

The principal author of this final rulemaking is David C. Hemstreet, Division of Lands, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The information collection requirements contained in this final rulemaking have been cleared by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0153.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 501 et seq.).

The changes made by this final rulemaking will simplify the conveyance of federally-owned mineral interests and speed the processing of applications for the conveyance of federally-owned mineral interests. The changes will impact and benefit all entities equally because the conveyance of federally-owned mineral interests is open to all existing or proposed surface owners, regardless of their size.

List of Subjects in 43 CFR Part 2720

Administrative practice and procedure, Public lands—mineral resources, Public lands—sales.

PART 2720—[AMENDED]

Under the authority of sections 209 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719, 1740), Part 2720, Group 2700, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

February 24, 1986

J. Steven Griles,

Assistant Secretary of the Interior.

1. The "Note" appearing immediately after the heading for Group 2700 is revised to read:

Note.—The information collection requirements contained in Parts 2720 and 1740 of Group 2700 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004-0153 and 1004-0012, respectively. The information is being collected to permit the authorized officer to determine if disposition of Federally-owned mineral interests should be made and to determine if disposition of public lands should be made for recreation and public purposes. This information will be used to make these determinations. A response is required to obtain a benefit.

2. The authority citation for part 2720 continues to read:

Authority: Secs. 209 and 310 of Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)

§ 2720.0-5 [Amended]

3. Section 2720.0-5 is amended by adding a new paragraph (d) to read:

(d) Proof of ownership means evidence of title acceptable in local realty practice by attorneys and title examiners and may include a current title attorney's opinon, based on a current abstract of title prepared by a bonded title insurance or title abstract company doing business in the locale where the lands are located.

4. A new section 2720.0-6 is added to read:

§ 2720.0-6 Policy.

As required by the Federal Land Policy and Management Act, conveyance of federally reserved mineral interest shall be made only upon a determination of no know value or if it can be clearly demonstrated that the mineral reservation is interfering with or precluding appropriate nonmineral development of the lands and that nonmineral development is a more beneficial use than mineral development. Allegation, hypothesis or speculation that such conditions could or may exist at some future time shall not be sufficient basis for conveyance. Failure to establish by convincing factual evidence that the requisite conditions of interference or preclusion presently exist, and that nonmineral development is a more beneficial use, shall result in the rejection of an application.

§ 2720.1-1 [Amended]

5. Section 2720.1-1 is amended by designating the introductory text as paragraph (a), redesignating the existing paragraphs (a) and (b) as paragraphs (a)(1) and (2) and adding a new paragraph (b) to read:

(b) Publication in the Federal Register of a notice of the filing of an application under this part shall segregate the mineral interests owned by the United States in the public lands covered by the application to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either

upon issuance of a patent or other document of conveyance to such mineral interests, upon final rejection of the application or 2 years from the date of filing of the application which ever occurs first.

§ 2720.1-2 [Amended]

6. Section 2720.1-2(d)(3) is amended by removing the phrase "to the applicant; and" at the end thereof and replacing it with the phase "and a showing of ownership in the applicant, with supporting survey evidence acceptable to the authorized officer, which may consist of a metes and bounds survey prepard and certified by a civil engineer or land surveyor licensed under the laws of the State in which the lands are located; and".

§ 2720.1-3 [Amended]

7. Section 2720.1-3 is amended by:

A. Amending paragraph (b)(2) by removing from where it appears in the first sentence thereof the phrase "after he has obtained the approval of the U.S. Geological Survey" and by removing from where it appears in the second sentence thereof the phrase "locatable and saleable minerals prepared by the Bureau of Land Management and mineral resources evaluation reports on leasable minerals prepared by the U.S. Geological Survey" and replace it with the phrase "minerals prepared by the Bureau of Land Management";

B. Amending paragraph (c) by removing from where it appears the phrase "after having obtained the approval of the U.S. Geological Survey";

C. Amending paragraph (d) by removing from where it appears the phrase", with the approval of the U.S. Geological Survey,"; and

D. Amending paragraph (e) by removing from where it appears in the first sentence the phrase", after the authorized officer has obtained the approval of the U.S. Geological Survey", by removing from where it appears in seventh sentence the phrase "and with the approval of the plan of operations by the U.S. Geological Survey" and by also removing the phrase "and the U.S. Geological Survey", and by removing from where it appears in the eleventh sentence the phrase "leasable mineral resources to the U.S. Geological Survey and that needed for determination of the economic value of locatable and salable mineral resources" and replace it with the phrase "mineral resources".

[FR Doc. 86-6102 Filed 3-19-86; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 51180-5180]

Fishery Conservation and Management; Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the reapportionment of amounts of pollock apportioned to domestic annual processing (DAP) and reserve amounts of flounders and the "other species" category to the total allowable level of foreign fishing (TALFF) under provisions of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This action is necessary to provide sufficient bycatch for the foreign longline fishery on Pacific cod. It is intended as a management measure that promotes full utilization of Alaska groundfish.

DATES: This notice is effective March 17, 1986. Comments on this action are invited until April 1, 1986.

ADDRESSES: Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. The aggregate data upon which this adjustment is based will be available for public inspection during business hours at the Alaska Regional Office, NMFS, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet Smoker (Resource Management Specialist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The regulations implementing the FMP at § 672.20(c) authorize the apportionment of surplus amounts of the reserve and the domestic annual harvest (DAH) to TALFF if the Director, Alaska Region, NMFS (Regional Director), after consulting with the North Pacific Fishery Management Council (Council), has determined that these amounts will not be harvested by domestic fishermen during the remainder of the year. Interim initial specifications for Gulf of Alaska groundfish (51 FR 956, January 9, 1986) were modified later (51 FR 5198, February 12, 1986), and pollock reserves were reapportioned to joint venture processing (JVP) by another action (51 FR 7446, March 4, 1986). DAP and JVP together comprise TALFF.

The Regional Director has determined that the current TALFF specifications of pollock and flounders in the Western and Central areas in the Gulf of Alaska and "other species" Gulf-wide are insufficient to provide appropriate bycatch amounts for the Pacific cod TALFFs in the Western and Central areas, and that it is necessary immediately to increase those amounts to avoid disruption to the foreign fishery. He also has determined that the amounts to be reapportioned from DAP and reserves will not be taken by U.S. fishermen. Consequently, 100 metric tons (mt) of pollock in the Western/Central area is reapportioned from DAP to TALFF, and 40 mt of flounders in the Western area, 10 mt of flounders in the Central area, and 100 mt of "other species" Gulf-wide are reapportioned from their respective reserves to TALFF.

TABLE 1.—GULF OF ALASKA REAPPORTIONMENT FROM DAH AND RESERVE TO TALFF. (FIGURES ARE IN METRIC TONS) DAH=DAP+JVP.

Species/regulatory area	Current	This action	Revised
Pollock:			
Western/Central			
(OY=305,000)			
Reserve	0	0	0
TALFF	40	+100	140
DAH	304,960	−100	304,860
DAP	201,960	−100	201,860
JVP	103,000	0	103,000
Flounders:			
Western			
(OY=10,400)			
Reserve	2,020	40	1,980
TALFF	60	+40	100
DAH	8,320	0	8,320
DAP	7,284	0	7,284
JVP	1,036	0	1,036
Central			
(OY=14,700)			
Reserve	2,920	−10	2,910
TALFF	10	+10	20
DAH	11,770	0	11,770
DAP	10,686	0	10,686
JVP	1,084	0	1,084
Other species:			
Gulf-wide			
(OY=22,460)			
Reserve	4,312	−100	4,212
TALFF	180	+100	280
DAH	17,968	0	17,968
DAP	9,074	0	9,074
JVP	8,894	0	8,894

Classification

This action is taken under 50 CFR Part 672 and complies with Executive Order 12291.

In view of the need to avoid disruption of domestic fisheries, NOAA has determined that delaying the effective date of this notice would be impracticable, unnecessary, and contrary to the public interest.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2200

[Circular No. 2579]

Procedures for Exchanges Involving Fee Federal Coal Deposits

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 2200, Group 2200, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 2200—[AMENDED]

1. The authority citation for Part 2200 is revised to read:

Authority: 43 U.S.C. 1715, 1718, 1732 and 1740.

2. Part 2200 is amended by adding a new subpart 2203 to read:

Subpart 2203—Exchanges Involving Fee Federal Coal Deposits

Sec.
2203.0–6 Policy.
2203.0–9 Cross references.
2203.1 Opportunity for public comment on exchange proposal.
2203.2 Submission of information concerning proposed exchange.
2203.3 Public meeting.
2203.4 Consultation with the Attorney General.
2203.5 Action on advice of the Attorney General.

Subpart 2203—Exchanges Involving Fee Federal Coal Deposits

§ 2203.0–6 Policy.

When determining whether a fee exchange of the Federal coal deposits is in the public interest, it is the policy of the Department of the Interior to consider whether the exchange will create or maintain a situation inconsistent with the Federal anti-trust laws. The Bureau of Land Management, in making the determination of public interest, shall consider the advice of the Attorney General of the United States concerning whether the exchange will create or maintain a situation inconsistent with the Federal antitrust laws.

§ 2203.0–9 Cross references.

The authorized officer shall implement a fee exchange of Federal coal deposits in compliance with the requirements of subparts 2200 and 2201 on this title.

§ 2203.1 Opportunity for public comment and public meeting on exchange proposal.

Upon receipt of a proposal for a fee exchange of Federal coal deposits, the authorized officer shall publish a notice of receipt of an exchange proposal as set forth in § 2201.2 of this title, which shall be distributed in accordance with § 2201.1(e) of this title and which shall include a request for public comment on the public interest factors of the exchange proposal.

§ 2203.2 Submission of information concerning proposed exchange.

(a) Any person submitting a proposal for a fee exchange of Federal coal deposits shall submit on a form approved by the Director, Bureau of Land Management, specific information concerning the coal reserves presently held in each geographic area involved in the exchange along with a description of the reserves that would be added or eliminated by the proposed exchange. In addition, the person filing a proposed exchange under this section shall furnish any additional information requested by the authorized officer in connection with the consideration of the anti-trust consequences of the proposed exchange.

(b) The authorized officer shall transmit a copy of the information required by paragraph (a) of this section to the Attorney General upon its receipt.

(c) All non-proprietary information submitted under paragraph (a) of this section shall be made a part of the public record on each proposed exchange. With respect to proprietary information submitted under paragraph (a) of this section, only a description of the type of information submitted shall be included in the public record.

(d) Where the entity proposing a fee coal exchange has previously submitted the currently required information, a reference to the date of submission and to the serial number of the record in which it is filed, together with a statement of any and all changes in holdings since the date of the previous submission, shall be accepted.

§ 2203.3 Public meeting.

Upon completion of an environmental analysis, but prior to the issuance of a notice of realty action, the authorized officer shall publish a notice in the Federal Register setting a time and place where a public meeting will be held to receive public comment on the public interest factors of the proposed exchange. Such notice shall be distributed in accordance with § 2201.1(e) of this title. The public meeting shall:

(a) Follow procedures established by the authorized officer, which shall be announced prior to the meeting; and

(b) Be recorded and a transcript prepared, with the transcript and all written submissions being made a part of the public record of the proposed exchange.

§ 2203.4 Consultation with the Attorney General.

(a) The authorized officer shall, at the conclusion of the comment period and public meeting provided for in § 2203.3 of this title, forward to the Attorney General copies of the comments received in response to the request for public comments and the transcript and copies of the written comments received at the public meeting.

(b) The authorized officer shall allow the Attorney General 90 days within which the Attorney General may advise, in writing, on the anti-trust consequences of the proposed exchange.

(c) If the Attorney General requests additional information concerning the proposed exchange, the authorized officer shall request, in writing, such information from the person proposing the exchange, allowing a maximum period of 30 days for the submission of the requested information. The 90-day period provided in paragraph (b) of this section shall be extended for the period required to obtain and submit the requested information, or 30 days, whichever is sooner.

(d) If the Attorney General notifies the authorized officer, in writing, that additional time is needed to review the anti-trust consequences of the proposed

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exchange, the time provided in paragraph (b) of this section, including any additional time provided under paragraph (c) of this section, shall be extended for the period requested by the Attorney General. If the Attorney General has not responded to the request for anti-trust review within the time granted for such review, including any extensions thereof, the authorized officer may proceed with the exchange without the advice of the Attorney General.

§ 2203.5 Action on advice of the Attorney General.

(a) The authorized officer shall make any advice received from the Attorney General a part of the public record on the proposed exchange.

(b) Except as provided in § 2203.4(d) of this title, the authorized officer shall not make a final decision on the proposed exchange and whether it is in the public interest until the advice of the Attorney General has been considered. The authorized officer shall, in the record of decision on the proposed exchange, discuss the consideration given any advice received from the Attorney General in reaching the final decision on the proposed exchange.

Dated: March 4, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 86-8221 Filed 4-11-86; 8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2200

[Circular No. 2579]

Procedures for Exchanges Involving Fee Federal Coal Deposits

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking establishes procedures and standards by which fee coal exchanges being processed by the Bureau of Land Management will be reviewed by the Department of Justice. It will allow Bureau field officials to integrate Department of Justice consideration of the antitrust consequences of such a proposed exchange(s) into their decision as to whether an exchange is in the public interest.

EFFECTIVE DATE: May 14, 1986.

ADDRESS: Any suggestions or inquiries should be sent to: Director (320), Bureau of Land Management, Room 3643, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: David Hemstreet, (202) 343-8693.

SUPPLEMENTARY INFORMATION: A proposed rulemaking announcing procedures that would be used by the Department of the Interior in securing the review of the Department of Justice on the antitrust consequences of fee coal exchanges being processed by the Bureau of Land Management was published in the **Federal Register** on September 13, 1985 (50 FR 37389), with a 30-day comment period. During the comment period, comments were received from 11 sources; eight from business interests; one from a State governmental entity; and two from Federal agencies.

Several of the comments expressed opposition to the proposed rulemaking, with one comment stating that an antitrust review is not required in making a decision on public interest and was misguided as a policy matter. Several other comments expressed the view that the proposed rulemaking did not go far enough in that it deals only with antitrust consequences and does not address anticompetitive factors.

Those comments expressing opposition to the proposed rulemaking did so on the grounds that the antitrust review for a fee coal exchange should be no more stringent than the antitrust review required for Federal coal leasing. The comments were expressly concerned with the mandatory public meeting required by §§ 2203.1 and 2203.3 of the proposed rulemaking, a requirement that is not present in the regulations on Federal coal leasing. The comments expressed the view that there is no need for a public meeting to enable the Department of Justice to conduct its antitrust review. It was the view of some of the comments that if there is a need for a public meeting, it should be included only as part of the public interest factor evaluation process for all exchanges and should be added to the regulations covering exchanges considered under section 206 of the Federal Land Policy and Management Act.

Another suggestion raised by the comments was that the final rulemaking should enumerate the public interest factors set out in section 206 of the Federal Land Policy and Management Act and state that each would be given equal or greater weight than antitrust consequences in the Department of the Interior's final determination. The comments went on to suggest that if this suggestion is not adopted, the Bureau of Land Management field offices, as well as the general public, might receive the impression that the discretionary antitrust review outweighs the enumerated public interest factors.

Those comments that opposed the proposed rulemaking because they viewed it as focusing on antitrust consequences and not considering the anticompetitive factors, made the suggestion that the Department of Justice should initiate a rulemaking setting out specifically the type of review that will be conducted for fee coal exchanges. This new rulemaking process would give interested parties and the public an opportunity to comment on the standards that would be employed in the antitrust review. These comments were of the view that the antitrust potential is tested by the current Department of Justice review is inadequate for fee coal exchanges and that separate standards must be developed for measuring the competitive impact of exchanges with common carrier railroads for checkerboard tracts. The comments suggested that these new standards, if they are to be adequate, must analyze not only coal holdings, but also the unique impacts on sales and production of railroad transportation control, coupled with the ability to develop large amounts of coal in checkerboard tracts.

Shortly before publication of this proposed rulemaking, the United States District Court for the District of Columbia in a footnote in the case of the *National Coal Association* v. *Hodel* (617 F. Supp 584, 591 n.20(1985)) pointed out that the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) specifically defines the relevant factors to be considered by the Secretary of the Interior in making a public interest determination and that these factors focus primarily on environmental and community development concerns, not antitrust concerns. The footnote went on to say that under such circumstances the Secretary is not required to assess the potential anticompetitive effects of land exchanges under the Act. Even though it appears that antitrust review is not a statutory requirement, which has been the position of the Department of the Interior, there is nothing to prevent the Secretary from including antitrust review as a discretionary factor in making a public interest determination.

After carefully considering this decision and the comments, the final rulemaking carries out the policy decision of the Secretary of the Interior to include an antitrust review in making a public interest determination and adopts the language of the proposed rulemaking with only minor modifications. The final rulemaking will provide for the review of all fee coal exchange proposals with the standard of review being whether the exchange proposal would create or maintain a situation inconsistent with the Federal antitrust laws. The review provided by the procedures established by this final rulemaking will differ from that provided for coal leasing in that this review will require a public meeting and also require the non-Federal party to an exchange to submit data on the coal being transferred to the United States, as well as submitting data on its coal reserves in the geographic area and the coal that will be received from the United States.

The suggestion made in one of the comments that this final rulemaking enumerate the public interest factors required by the Federal Land Policy and Management Act and require that each be given equal or greater weight than any antitrust factors has not been adopted by the final rulemaking. The final rulemaking does cross reference the requirements of 43 CFR Subparts 2200 and 2201, which provide sufficient assurance that the public interest factors set forth in the Act will be considered. The weight given to any one public interest factor will be determined on a case-by-case basis, with the circumstances of each case determining the weight given any specific factor.

The proposed rulemaking requested the public to comment on two specific

issues. The first issue was whether the public meeting required by the proposed rulemaking should be held early in the exchange process, as provided in the proposed rulemaking, or after the issuance of the notice of realty action near the end of the exchange process. The second issue was whether the final rulemaking should provide a minimum size threshold below which no antitrust review would be required, with a 100 million ton increase in an exchange party's marketable reserves being suggested as the cut-off point.

The comments on the timing of the public meeting varied, with one comment expressing the view that the meeting should be held early in the exchange process, one recommending that the meeting be held at the time the exchange proposal is received, and two wanting the public meeting at the time the notice of realty action is published. One comment recommended that two public meetings be held, one at the time the proposal is submitted and a second one at the time the notice of realty action is published. The comments on the timing of the public meeting ranged from a concern that there might not be sufficient data available on which to base a meaningful comment if the meeting is held too early in the process to a concern in other comments that there might be an inordinate delay in the timing of the public meeting if the Attorney General's review does not begin until the notice of realty action is published. After careful consideration of the comments, the final rulemaking has been amended to require the public meeting to be held after completion of the environmental assessment for a proposed exchange and prior to the issuance of a notice of realty action. This change will assure that sufficient data are available for meaningful public comment and that such comment is available to the authorized officer prior to issuance of a determination that the proposed exchange would be in the public interest.

Finally, the final rulemaking adopts the provision of the proposed rulemaking that makes the advice of the Attorney General part of the public record on the exchange and available for written public comment as one of the public interest factors when the notice of realty action is published.

Seven comments were received on the issue of a minimum size threshold below which no antitrust review would be required, with only one comment supporting the issue. All but one of the other comments recommended that the antitrust review be made applicable to all fee coal exchange proponents. Another comment recommended that the antitrust review should be applied only to exchanges with common carrier railroads and their affiliates. A careful review of the comments has led to a decision that the final rulemaking will not adopt a minimum threshold level for antitrust review, with all fee coal exchanges being subject to antitrust review.

A comment on the policy section of the proposed rulemaking, § 2203.0–6, suggested a change in this section of the final rulemaking. The suggested language has been adopted by the final rulemaking because it clarifies the intent of the section which is to make the advice of the Attorney General on antitrust consequences only one element in the Department of the Interior's overall public interest determination for a fee coal exchange proposal. Two additional suggestions for changes in this section were made in the comments and they were not adopted by the final rulemaking.

One comment on § 2203.1 of the proposed rulemaking suggested that this section or § 2203.2 be amended by the final rulemaking to require the authorized officer to notify the Governor of an affected State upon receipt of a fee coal exchange proposal. This suggestion has not been adopted by the final rulemaking because it would repeat a requirement that appears in 43 CFR 2201.1(e), a section that is applicable to fee coal exchange proposals.

Another comment on § 2203.1 of the proposed rulemaking suggested that the phrase "notice of initiation" was inappropriate and should be deleted to make it clear that the opportunity for public comment and a public meeting is tied to the receipt of the fee coal exchange proposal. This suggestion has been adopted by the final rulemaking.

A comment on § 2203.2 of the proposed rulemaking suggested that the final rulemaking be amended to contain language similar to that in 43 CFR 3422.3–4(b) which allows a successful bidder for a Federal coal lease to update any information on its holdings previously submitted to the Bureau of Land Management, rather than having to refile the information. This suggestion, which reduces the regulatory burden on the public, has been adopted by the final rulemaking.

Another comment on § 2203.2 of the proposed rulemaking recommended that the final rulemaking adopt language requiring the submission of data for an anticompetitive review rather than an antitrust review. The final rulemaking has not adopted this suggestion because of the determination of the Department of the Interior that the standard of review on a fee coal exchange proposal will be whether it will create or maintain a situation inconsistent with the Federal antitrust laws.

Another comment on this section of the proposed rulemaking expressed the view that for clarity the terms "geographic area" and "description of reserves" should be defined in the final rulemaking. The comment went on to suggest the term "geographic area" should be replaced with the term "coal reserve area" and the term "description of reserves" should be expanded to include specific characteristics of the reserve, i.e., location, mining ratios, coal quality, bed-thickness, geologic conditions. The comment indicated that even though much of this information would be proprietary, the information was needed in order to assure the public that adequate information had been submitted for use in making the antitrust review. These suggestions have not been adopted by the final rulemaking. The Department of Justice has defined three relevant geographic areas in the western United States for use in its antitrust review. These areas were established to test the market share of an entity in those areas. The term "geographic area" has a well established meaning in terms of antitrust review by the Attorney General and its use in the proposed and final rulemakings without further definition is appropriate. The form that will be used by a fee coal exchange proponent will require the submission of information that will be needed by the Attorney General in making a comprehensive antitrust review of the proposal.

Another comment on § 2203.3 of the proposed rulemaking recommended that the terms "proprietary," "non-proprietary" and "public record" should be defined in the final rulemaking. This recommendation has not been adopted because these terms have well understood meanings and are not given any special meaning in this final rulemaking.

A final comment on § 2203.3 of the proposed rulemaking suggested that the form that is to be used for the submission of data for the antitrust review should be approved by the Department of Justice, rather than the Bureau of Land Management and that only the Department of Justice should be given authority to request any additional information. This suggestion was based on the rationale that the agency with the expertise in antitrust review, the Department of Justice, would know what additional information was actually needed to complete the review and

would not request any unneeded information, the furnishing of which could cause needless expense and effort. The suggestion has not been adopted by the final rulemaking. The form requiring antitrust information will be developed in close cooperation with the Department of Justice and the authorized officer will request additional information only when requested to do so by the Department of Justice.

Three comments on § 2203.4 of the proposed rulemaking were of the view that the 90-day review period provided for antitrust review by the Department of Justice was too long when contrasted to the 30-day review period provided in 43 CFR 3422.3–4(c) for antitrust review of coal leases. These comments went on to recommend that the review period be reduced to 30 or 45 days, the 30 days being parallel to that provided on coal leases and the 45 days corresponding to that allowed for public comment on a notice of realty action. The final rulemaking has not adopted any of these suggestions. The 90-day time period has been included at the request of the Department of Justice, which is in the best position to make this determination, as the time needed for a comprehensive antitrust review. There is no requirement that the full 90 days be utilized and in many cases the entire period will not be used, but the full period may be needed in the more complex cases.

One of the comments on § 2203.4 of the proposed rulemaking made the observation that a fee coal exchange proponent may find it impossible to supply any requested additional information within the 30 days required by paragraph (c) of this section. The comment went on to say that the final rulemaking should provide either an opportunity for an extension of the 30-day period or a penalty for failure to meet the deadline, i.e., rejection of the proposal and the case closed if the additional information is not submitted within the 30-day period. The final rulemaking has adopted the language of § 2203.4 of the proposed rulemaking without change. First, if a proponent has submitted the information required by the antitrust review form, there is little likelihood of a requirement for additional information that would take more than 30 days to gather. Second, the section implies that a fee coal exchange proposal will be rejected and the case closed if the additional information is not submitted within the 30-day period.

A final comment on § 2203.4 of the proposed rulemaking suggested adding anticompetitive consequences and suggested amending paragraph (d) to provide that the authorized officer cannot issue a final exchange determination until the Department of Justice has completed its review and the written advice of the Attorney General has been submitted. The final rulemaking has not adopted either of these suggestions because they are not needed. The antitrust review contemplated by the rulemaking can be completed and any advice that is to be given rendered in the time set out in the rulemaking.

The comment on § 2203.5 of the proposed rulemaking recommended that the final rulemaking renumber this section and add a new § 2203.5 that would place the burden of proof on a fee coal exchange proponent that the transaction would not lesson competition or violate the antitrust laws and, if such proof were not provided, the exchange proposal should be denied. This suggestion has not been adopted by the final rulemaking because the standard for antitrust review used by the Department of the Interior will be a test of the market share of the proponent of the exchange in a defined geographic area and whether it is inconsistent with antitrust laws. Since the antitrust consequences are but one of the public interest factors being considered, it will not always be the determining factor in a determination of whether the exchange proposal should be approved or not.

This same comment suggested renumbering § 2203.5 as § 2203.6 in the final rulemaking and amending it to provide that when the Attorney General advises that a fee coal exchange proposal is inconsistent with the antitrust laws and would have anticompetitive consequences, the Secretary of the Interior should be the only person to have the authority to approve the proposal and the authority should not be delegated to anyone else. Another change recommended by this comment is that the final rulemaking provide that the Attorney General's advice be published in the **Federal Register** with a 45-day period for public comment with a right of extension of the comment period upon a showing of good cause. Neither of these suggestions has been adopted by the final rulemaking. First, the authority to make critical public interest determinations on proposals involving exchanges of public lands is handled by the individual in the Bureau of Land Management office authorized to make such decisions. There is no reason to apply a different standard in the case of fee coal exchange proposals and the Secretary of the Interior has the discretionary authority to intervene in any situation where it is deemed appropriate. Second, the recommendation that the advice of the Attorney General be published in the **Federal Register** is not needed because of the provision in the proposed and final rulemakings that provides for making the advice of the Attorney General part of the public record and requires that it be part of the notice of realty action which has a 45-day period for public comment.

The principal author of this final rulemaking is David Hemstreet, Division of Lands, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The final rulemaking provides a procedure for Department of Justice review of the antitrust considerations of any fee coal exchange proposal being processed by the Bureau of Land Management. The advice of the Department of Justice on antitrust consequences is a component of the Bureau field official's determination as to whether a fee coal exchange proposal, whether for a large or small entity, is in the public interest.

The information collection requirements imposed by this final rulemaking are exempt from clearance by the Office of Management and Budget under 44 U.S.C. 3508 because there will be fewer than 10 respondents per year with the respondents rarely exceeding 2 in most years.

List of Subjects in 43 CFR Part 2200

Administrative practices and procedure, National forest, Public lands, Public lands—classification, Public lands—mineral resources.

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 2200, Group 2200, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

Dated: March 4, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

PART 2200—[AMENDED]

1. The authority citation for Part 2200 is revised to read:

Authority: 43 U.S.C. 1715, 1716, 1732 and 1740.

2. Part 2200 is amended by adding a new subpart 2203 to read:

Subpart 2203—Exchanges Involving Fee Federal Coal Deposits

Sec.
2203.0-6 Policy.
2203.0-9 Cross references.
2203.1 Opportunity for public comment on exchange proposal.
2203.2 Submission of information concerning proposed exchange.
2203.3 Public meeting.
2203.4 Consultation with the Attorney General.
2203.5 Action on advice of the Attorney General.

Subpart 2203—Exchanges Involving Fee Federal Coal Deposits

§ 2203.0-6 Policy.

When determining whether a fee exchange of the Federal coal deposits is in the public interest, it is the policy of the Department of the Interior to consider whether the exchange will create or maintain a situation inconsistent with the Federal anti-trust laws. The Bureau of Land Management, in making the determination of public interest, shall consider the advice of the Attorney General of the United States concerning whether the exchange will create or maintain a situation inconsistent with the Federal antitrust laws.

§ 2203.0-9 Cross references.

The authorized officer shall implement a fee exchange of Federal coal deposits in compliance with the requirements of subparts 2200 and 2201 on this title.

§ 2203.1 Opportunity for public comment and public meeting on exchange proposal.

Upon receipt of a proposal for a fee exchange of Federal coal deposits, the authorized officer shall publish a notice of receipt of an exchange proposal as set forth in § 2201.2 of this title, which shall be distributed in accordance with § 2201.1(e) of this title and which shall include a request for public comment on the public interest factors of the exchange proposal.

§ 2203.2 Submission of information concerning proposed exchange.

(a) Any person submitting a proposal for a fee exchange of Federal coal deposits shall submit on a form approved by the Director, Bureau of Land Management, specific information concerning the coal reserves presently held in each geographic area involved in the exchange along with a description of the reserves that would be added or eliminated by the proposed exchange. In addition, the person filing a proposed exchange under this section shall furnish any additional information requested by the authorized officer in connection with the consideration of the anti-trust consequences of the proposed exchange.

(b) The authorized officer shall transmit a copy of the information required by paragraph (a) of this section to the Attorney General upon its receipt.

(c) All non-proprietary information submitted under paragraph (a) of this section shall be made a part of the public record on each proposed exchange. With respect to proprietary information submitted under paragraph (a) of this section, only a description of the type of information submitted shall be included in the public record.

(d) Where the entity proposing a fee coal exchange has previously submitted the currently required information, a reference to the date of submission and to the serial number of the record in which it is filed, together with a statement of any and all changes in holdings since the date of the previous submission, shall be accepted.

§ 2203.3 Public meeting.

Upon completion of an environmental analysis, but prior to the issuance of a notice of realty action, the authorized officer shall publish a notice in the Federal Register setting a time and place where a public meeting will be held to receive public comment on the public interest factors of the proposed exchange. Such notice shall be distributed in accordance with § 2201.1(e) of this title. The public meeting shall:

(a) Follow procedures established by the authorized officer, which shall be announced prior to the meeting; and

(b) Be recorded and a transcript prepared, with the transcript and all written submissions being made a part of the public record of the proposed exchange.

§ 2203.4 Consultation with the Attorney General.

(a) The authorized officer shall, at the conclusion of the comment period and public meeting provided for in § 2203.3 of this title, forward to the Attorney General copies of the comments received in response to the request for public comments and the transcript and copies of the written comments received at the public meeting.

(b) The authorized officer shall allow the Attorney General 90 days within which the Attorney General may advise, in writing, on the anti-trust consequences of the proposed exchange.

(c) If the Attorney General requests additional information concerning the proposed exchange, the authorized officer shall request, in writing, such information from the person proposing the exchange, allowing a maximum period of 30 days for the submission of the requested information. The 90-day period provided in paragraph (b) of this section shall be extended for the period required to obtain and submit the requested information, or 30 days, whichever is sooner.

(d) If the Attorney General notifies the authorized officer, in writing, that additional time is needed to review the anti-trust consequences of the proposed exchange, the time provided in paragraph (b) of this section, including any additional time provided under paragraph (c) of this section, shall be extended for the period requested by the Attorney General. If the Attorney General has not responded to the request for anti-trust review within the time granted for such review, including any extensions thereof, the authorized officer may proceed with the exchange without the advice of the Attorney General.

§ 2203.5 Action on advice of the Attorney General.

(a) The authorized officer shall make any advice received from the Attorney General a part of the public record on the proposed exchange.

(b) Except as provided in § 2203.4(d) of this title, the authorized officer shall not make a final decision on the proposed exchange and whether it is in the public interest until the advice of the Attorney General has been considered. The authorized officer shall, in the record of decision on the proposed exchange, discuss the consideration given any advice received from the Attorney General in reaching the final decision on the proposed exchange.

[FR Doc. 86-8221 Filed 4-11-86; 8:45 am]
BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6708]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National

Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body has adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the third column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable foodplain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the Federal Register.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation.

In each entry a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows: Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified	Date certain Federal Assistance no longer available in special flood hazard areas
Region I				
Maine: Brunswick, town of, Cumberland County.	230042B	July 15, 1975, Emerg.; Apr. 30, 1986, Reg.; Apr. 30, 1986, Susp.	Nov. 1, 1974, June 14, 1977, and Jan. 3, 1986.	Apr. 30, 1986.
Region II				
New York:				
Goshen, village of, Orange County	361571B	July 7, 1975, Emerg.; Apr. 30, 1986, Reg.; Apr. 30, 1986, Susp.	June 24, 1977 and Apr. 30, 1986, Apr. 30, 1986.	Do.
Goshen, town of, Orange County	360614B	Apr. 4, 1975, Emerg.; Apr. 30, 1986, Reg.; Apr. 30, 1986, Susp.	Mar. 22, 1974, May 28, 1976 and Apr. 30, 1986.	Do.
Region III				
Pennsylvania:				
New Berlin, borough of, Union County.	420633B	Nov. 21, 1975, Emerg.; Apr. 30, 1986, Reg.; Apr. 30, 1986, Susp.	Feb. 22, 1974, July 2, 1976 and Apr. 30, 1986.	Do.
Conewago, township of, Dauphin County.	422406A	Feb. 10, 1981, Emerg.; Apr. 30, 1986, Reg.; Apr. 30, 1986, Susp.	Dec. 27, 1974 and Apr. 30, 1986.	Do.
Roaring Creek, township of, Columbia County.	421557B	Apr. 30, 1979, Emerg.; Apr. 30, 1986, Reg.; Apr. 30, 1986, Susp.	Dec. 13, 1974, Sept. 3, 1976 and Apr. 30, 1986.	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified	Date certain Federal Assistance no longer available in special flood hazard areas
Region IV				
Florida: Parker, city of, Bay County	120011B	May 5, 1975, Emerg.; Aug. 1, 1980, Reg.; Apr. 30, 1986, Susp	Oct. 15, 1976, Aug. 1, 1980 and Apr. 30, 1986.	Do.
Region V				
Illinois: Hancock County, unincorporated areas.	170267C	Apr. 25, 1980, Emerg.; Apr. 30, 1986, Reg.; Apr. 30, 1986, Susp	Jan. 24, 1975, Feb. 20, 1976, Dec. 4, 1981 and Apr. 30, 1986.	Do.
Region II				
Minimal Conversions				
New York:				
Fabius, town of, Onondaga County	360577B	Nov. 12, 1974, Emerg.; Apr. 30, 1986, Reg.; Apr. 30, 1986, Susp	Aug. 16, 1974, Nov. 14, 1975 and Apr. 30, 1986.	Do.
Hope, town of, Hamilton County	361403B	Dec. 12, 1975, Emerg.; Apr. 30, 1986, Reg.; Apr. 30, 1986, Susp	Nov. 22, 1974, Sept. 3, 1976 and Apr. 30, 1986.	Do.
Spafford, town of, Onondaga County.	360594B	Aug. 19, 1974, Emerg.; Apr. 30, 1986, Reg.; Apr. 30, 1986, Susp	Dec. 13, 1974, July 9, 1976 and Apr. 30, 1986.	Do.
Region IV				
Florida: Lee, town of, Madison County	120151B	Sept. 26, 1975, Emerg.; Apr. 30, 1986, Reg.; Apr. 30, 1986, Susp	Sept. 6, 1974, Jan. 30, 1976 and Apr. 30, 1986.	Do.
Georgia: Poulan, city of, Worth County	130197B	Aug. 11, 1975, Emerg.; Apr. 30, 1986, Reg.; Apr. 30, 1986, Susp	May 17, 1974, Feb. 6, 1976, Apr. 30, 1986.	Do.
Tennessee:				
Celina, city of, Clay County	470032C	Feb. 27, 1975, Emerg.; Apr. 30, 1986, Reg.; Apr. 30, 1986, Susp	June 21, 1974, July 9, 1976, Jan. 25, 1980 and Apr. 30, 1986.	Do.
Gainesboro, city of, Jackson County	470096B	Apr. 1, 1975, Emerg.; Apr. 30, 1986, Reg.; Apr. 30, 1986, Susp	June 21, 1974 and Sept. 24, 1976	Do.
Region V				
Illinois: Ashton, village of, Lee County	170415B	May 2, 1975, Emerg.; Apr. 30, 1986, Reg.; Apr. 30, 1986, Susp	May 3, 1974, June 11, 1976 and Apr. 30, 1986.	Do.
Michigan: Berrien Springs, village of, Berrien County.	260330A	July 12, 1976, Emerg.; Apr. 30, 1986, Reg.; Apr. 30, 1986, Susp	Aug. 1, 1975 and Apr. 30, 1986	Do.
Region VI				
Arkansas: Elm Springs, town of, Washington County.	050213B	May 15, 1975, Emerg.; Apr. 30, 1986, Reg.; Apr. 30, 1986, Susp	Aug. 16, 1974, Nov. 14, 1975 and Apr. 30, 1986.	Do.
Region VII				
Iowa: Charter Oak, city of, Crawford County.	190094A	Mar. 9, 1978, Emerg.; Apr. 30, 1986, Reg.; Apr. 30, 1986, Susp	June 4, 1976 and Apr. 30, 1986	Do.

Code for reading 3rd column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: April 8, 1986.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 86-8216 Filed 4-11-86; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 2, 15, 18, 68, and 73

[FCC 85-670]

Reorganization of the Office of Science and Technology

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission approved a reorganization of the Office of Science and Technology (OST) into a new Office of Engineering and Technology. The Chief Scientist's position is being replaced by the position of Chief Engineer; and, the former three divisions of OST (Authorization and Standards, Spectrum Management, and Technical Analysis) are consolidated into two new divisions: the Authorization and Evaluation Division and the Spectrum Engineering Division. In addition, the immediate staff of the Chief Engineer is consolidated into a Program Management Staff. The reorganization will formalize a substantial evolutionary shift in the Office's role; and it will greatly streamline and clarify the reporting and management control structure.

EFFECTIVE DATE: April 14, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Bruce Franca, Program Management Staff, Office of Engineering and Technology, (202) 632-7060.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 0

Organization and functions.

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 2

Communications equipment.

47 CFR Part 15

Communications equipment.

47 CFR Part 18

Radio.

47 CFR Part 68

Communications equipment.

47 CFR Part 73

Radio, Television.

Order

[FCC 86-119]

In the matter of amendment of the Commission's Rules to Reflect a Reorganization of the Office of Science and Technology (OST).

Adopted: December 24, 1985.

Released: March 18, 1986.

By the Commission.

1. The Commission has approved a reorganization of the Office of Science and Technology. Implementation of the proposed changes requires amendment of various sections of the Commission's Rules and Regulations as indicated in the Appendix.

2. The reorganization converts the Office of Science and Technology (OST)

CIRC. 2580

federal register

Tuesday
April 22, 1986

Part V

Department of the Interior

Bureau of Land Management

43 CFR Parts 3500, 3510, 3520, 3530, 3540, 3550, 3560, 3570, 3580 and 3590

Revision of Regulations Covering Leasing of Solid Minerals Other Than Coal and Oil Shale; Final Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3500, 3510, 3520, 3530, 3540, 3550, 3560, 3570, 3580 and 3590

[Circular No. 2580]

Leasing of Solid Minerals Other Than Coal and Oil Shale; Revision of Regulations Covering Leasing of Solid Minerals Other Than Coal and Oil Shale

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking totally revises the provisions of 43 CFR Group 3500 concerning leasing of solid minerals other than coal and oil shale, to reduce the regulatory burden imposed on the public, to streamline and clarify the existing provisions, to change the format in order to address specific minerals individually and to achieve a number of miscellaneous purposes under the authority granted the Secretary of the Interior by various statutes.

EFFECTIVE DATE: May 22, 1986.

ADDRESS: Any suggestions or inquiries should be sent to: Director (650), Bureau of Land Management, Room 3600, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Zareh Mozian, (202) 343-2456.

SUPPLEMENTARY INFORMATION: A proposed rulemaking containing a revision of 43 CFR Group 3500 was published in the **Federal Register** on April 12, 1985 (50 FR 14512) with a 60 day comment period. During the comment period, which included an extension of 45 days, comments were received from 277 sources, with 194 coming from individuals, 38 from businesses, 7 from industry associations, 31 from Federal agencies, 4 from State and local governmental entities and 3 from attorneys. All of the comments were given careful consideration and will be addressed in the preamble in connection with the section commented upon. Only those sections that were the subject of comments are discussed in the preamble.

In general, the comments were favorable to the changes made by the proposed rulemaking, with a special endorsement for the proposed rulemaking's treatment of the minerals individually.

One comment requested that the final rulemaking contain a provision stating that the final rulemaking is only applicable to new or revised leases. This request has not been adopted by the final rulemaking. Nothing in the final relemaking is intended to change any specific terms and conditions of an existing lease, and in fact, many existing leases have an express provision to that effect. However, this final rulemaking contains many procedural and organizational statements which the Department of the Interior expects all lessees to follow.

Section 3500.0-3 Authorities.

Three comments were received on § 3500.0-3 of the proposed rulemaking. One comment questioned the listing of the Act of March 4, 1917 (16 U.S.C. 520) and recommended that the Act of March 1, 1911 (36 Stat. 961), be used instead because that was the authority for the purchase of Weeks Act lands. This recommendation was not adopted because except for the Act of June 28, 1952, the laws listed in the proposed rulemaking are identical to the laws listed in Reorganization Plan No. 3 (5 U.S.C. Appendix). It is under this cited authority that the Department of the Interior administers mineral leasing on these lands; the 1911 Act is not such authority for the Department. The Act of June 28, 1952, is listed because it refers back to Reorganization Plan No. 3. A second comment recommended that the Act of June 28, 1944 (58 Stat. 463, 483-485), relating to asphalt in Oklahoma be added to the special acts listed in the proposed rulemaking by the final rulemaking. This recommendation was not adopted because the Act of June 28, 1944, amended and supplemented the Mineral Leasing Act of 1920, although it has never been so codified. The final comment on this section of the proposed rulemaking questioned the elimination of a listing of conditions under which mineral leasing is permissible in those units of the National Park System where leasing is specifically authorized. The listing of conditions was eliminated by the proposed rulemaking and the final rulemaking because it has been moved to § 3582.3, where it is more appropriate. The final rulemaking adopts without substantive change § 3500.0-3 of the proposed rulemaking.

Section 3500.0-5 Definitions.

A general comment on § 3500.0-5 of the proposed rulemaking suggested the addition of the definitions of several terms to the section. All of the terms recommended for addition by the comment are defined in parts of the proposed rulemaking covering specific minerals if those terms are used in that part. The suggestion has not been adopted by the final rulemaking.

One comment questioned why the proposed rulemaking removed the definition of the term "rule of approximation" from the existing regulations. The definition of the term "rule of approximation" was removed by the proposed rulemaking because experience over the past several years has shown that it is no longer needed and its purpose can be accomplished administratively. The final rulemaking continues the exclusion of the definition of the term "rule of approximation."

One comment recommended that the final rulemaking make a change in the definition of the term "proper BLM office" as it appeared in the proposed rulemaking. The recommendation was not adopted by the final rulemaking because the change would have dealt with only a small portion of the extensive functions of a Bureau of Land Management office and those functions, as they relate to an applicant, are covered throughout the provisions of group 3500.

A comment questioned the addition of the phrase "and others specifically identified by Congress as part of the public domain" to the definition of the term "public domain lands" contained in the proposed rulemaking. This phrase, which is included in the final rulemaking, was used to indicate that Congress can designate reacquired lands as part of the public domain and if such an action is taken by the Congress, the fact that lands have been added to the public domain would be reflected on the official land records maintained by the Bureau of Land Management and open for public inspection.

One comment noted that the definition of the term "acquired lands" contained in the proposed rulemaking and adopted by the final rulemaking included the mineral estate of those lands and questioned how proof of ownership of the mineral estate would be shown. The document conveying the acquired lands to the United States would contain a recital of what interests were being conveyed and that document would be the basis of the interest of the United States.

A comment pointed out that the proposed rulemaking repeated the definition of the term "chiefly valuable" contained in the existing regulations (which was adopted in the **Federal Register** of April 25, 1984 (49 FR 17900)) and recommends that it be changed by the final rulemaking. After careful consideration of the recommended change, it was not adopted by the final rulemaking because the definition used in the proposed rulemaking is clearer than the recommended change.

Two final comments on this section of the proposed rulemaking suggested that the definition of the term "hardrock minerals" was confusing and recommended a change. The final rulemaking makes a change that clarifies the term.

Section 3500.5 Filing of documents.

Several comments questioned the need for paragraph (b) of the proposed rulemaking, with some of those making comments being concerned that the paragraph granted too much confidentiality. The section was carefully reviewed and the final rulemaking revises paragraph (b) to make it conform more precisely to the Freedom of Information Act requirements.

Section 3500.6 Multiple development.

One comment recommended that this section of the proposed rulemaking be changed by removing the ultimate phrase because it appears to broaden the requirement of the existing regulations. The final rulemaking has not adopted the recommendation because the language emphasizes the need for users of the same lands to not unreasonably interfere with the operations or other authorized uses of those lands.

Section 3500.7 Environmental considerations.

This section of the proposed rulemaking has been revised by the final rulemaking in response to a comment. The comment suggested that the proposed rulemaking failed to mention that leases and permits issued under group 3500 must conform to an approved land use plan.

Finally, the final rulemaking, in response to a comment, adds a new paragraph (c) that states that leasing will be consistent with unsuitability designations in accordance with the land use planning regulations and the Surface Mining and Reclamation Act.

Section 3500.8 Lands not subject to leasing.

One comment suggested that paragraph (a) of the proposed rulemaking did not conform with the provisions of the National Park Service Act of 1970, as amended (16 U.S.C. 1(c)). The final rulemaking has adopted a change to paragraph (a) that clearly states that lands within the National Park System are not subject to lease except as specifically authorized by law.

The final rulemaking has not adopted two changes suggested in the comments on this section of the proposed rulemaking because the references in this section are self explanatory and will eliminate far more confusion than they cause. The reference to lands acquired under the Act of March 1, 1911 (16 U.S.C. 513–519), was deleted because the lands, although not subject to leasing under the Mineral Leasing Act of 1920, are subject to leasing under the acquired lands authorities set forth elsewhere in the final rulemaking. The scope of paragraph (e) of the proposed and final rulemaking is based on the clear intent of the Congress as expressed in Senate Report No. 161, 80th Cong., 1st Sess. 3 (1947) and House Report No. 550, 80th Cong., 1st Sess. 3 (1947).

Section 3500.9–1 Consent and consultation.

There were several comments on this section of the proposed rulemaking. Some of the comments suggested that the specific status requiring consent be added to the final rulemaking. Other comments were of the view that the final rulemaking should include all surface management agencies, within, as well as outside, the Department of the Interior. Paragraphs (a) and (b) of the proposed and final rulemaking are advisory, while paragraph (c) is for the purpose of establishing a procedure for applicants to use in pursuing administrative remedies in agencies outside of the Department of the Interior. The requirement for consent on public domain lands is contained in numerous statutes that affect only a small amount of acreage, such as recreation areas within National Forest System lands. The most significant agency with statutory consent authority for public domain lands is the Department of Defense (43 U.S.C. 158). The final rulemaking would not be improved by listing all of these statutes. The final rulemaking adopts with only minor changes the language of the proposed rulemaking except that paragraph (b) pertaining to acquired lands has been amended to include permits in the requirement for consent by the surface management agency.

Section 3500.9–2 Ownership of surface overlying Federally-owned minerals by a State or charitable organization.

The final rulemaking has retitled this section for clarity.

Section 3500.9–3 Management of Federal minerals from reserved mineral estates.

In response to a comment, the final rulemaking has added a new section covering the right to prospect for, mine and remove minerals reserved to the United States under statutes set out in the section. This section is needed to clarify when those reserved minerals are subject to permitting or leasing.

Section 3501.1–1 Public domain.

Four comments were received on this section of the proposed rulemaking. The final rulemaking has not adopted the suggestion in one comment that would require an applicant to submit maps on unsurveyed public domain lands because such a requirement would place an unnecessary burden on the applicant. The final rulemaking has reinstated as a clarification the suggestion in one of the comments that unsurveyed public domain lands must be surveyed prior to the issuance of a lease.

One comment suggested that the provision of the final rulemaking adopt the provisions of the existing regulations for describing unsurveyed lands in Alaska. Such a provision has not been adopted by the final rulemaking because the lands in Alaska which have not been surveyed under the rectangular system of survey are covered by approved protraction surveys.

A final comment questioned whether omission of the 6-mile rule in the proposed rulemaking was intentional. The 6-mile rule has been omitted by both the proposed and final rulemaking because the requirement for reasonably compact form is sufficient.

Section 3501.1–2 Acquired lands.

One comment on this section of the proposed rulemaking suggested that the final rulemaking be changed to require an applicant for unsurveyed acquired lands to make application for only entire tracts. This suggestion has not been adopted by the final rulemaking because the final rulemaking requires the applicant to furnish an adequate description of the lands sought. Requiring the applicant to file an application for an entire tract would require the Bureau of Land Management to provide a description if only part of the lands in the tract are leased.

Section 3502.1 Who may hold leases.

A few of the comments on paragraph (a) of this section of the proposed rulemaking correctly stated that the Mineral Leasing Act of 1920 permits municipalities to hold mineral leases only for coal, oil, oil shale or gas. Therefore, the final rulemaking deletes the reference to municipalities in this section. A comment suggesting that the last sentence of paragraph (a) of the proposed rulemaking be moved to paragraph (b) was not adopted because paragraph (a) applies to all leases but

paragraph (b) applies only to leases of leasable minerals.

Section 3502.2 Qualifications and holding statements.

The concerns of one comment addressing the need for qualifications and holding statements have been carefully considered. Applications for a lease under group 3500 are not made on a form on which the applicant may simply sign a certification of his/her qualifications to hold a lease as is the situation for applications filed under group 3100 of this title. Moreover, the regulations in group 3100 were changed due to the burden created by the vast number of applications filed, as well as with the expressed intent of replacing the disclosure requirements with selective audits to verify compliance (47 FR 8544, February 26, 1982). In recognition of the above set out discussion, the final rulemaking does not adopt the comment's suggestion to delete the requirement for qualification and holding statements. The limited number of lease applications filed under group 3500 does not justify the expense of implementing the kind of changes devised for use in connection with the massive filings under group 3100. In response to a suggestion in a comment to delete § 3502.2–4(e) of the proposed rulemaking concerning aggregate foreign stockholding, the final rulemaking has limited the provision to instances where the holdings are greater than 10 percent. The change makes citizenship disclosures consistent with other provisions of the regulations, while allowing the Bureau of Land Management to obtain sufficient information to enable it to respond to concerns over foreign investment in Federal minerals.

Section 3503.1–2 Where remitted.

The final rulemaking has adopted a suggestion of one comment that the address for the Minerals Management Service should be set out in the regulations. The additional suggestion that the addresses of the proper BLM offices should be listed in the regulations was not adopted by the final rulemaking because those addresses for State offices are already set out in § 1821.2–1.

Section 3503.2–2 Minimum production and royalty.

Five comments on this section of the proposed rulemaking indicate some misunderstanding expressing the view that the section had been changed to require the payment of minimum royalty beginning with the first lease year instead of the sixth lease year as provided in the existing regulations. No such change was intended. The final rulemaking contains a revised section to eliminate any chance of misunderstanding.

Two comments objected to the requirement of the proposed rulemaking for written consent of the authorized officer before the lessee would be allowed to pay minimum royalty in lieu of production on an annual basis. The comments expressed concern that the proposed rulemaking appears to give the authorized officer the authority to force minimum production or relinquishment of their lease, placing a lessee's reserves in jeopardy, but felt that any such decision as to whether to produce from the lease or pay advance royalties should rest with the lessee. The final rulemaking has been amended to require minimum production or the payment of advance minimum royalty. The prior consent requirement has been eliminated. The Department of the Interior agrees with the view expressed in a comment that the decision whether to produce or pay minimum royalty is one that is primarily with the lessee. However, the final rulemaking does not adopt the view that this decision is an absolute right of the lessee.

One comment requested that any minimum royalty payment be recoverable from production royalties when production begins. The proposed rulemaking provides that minimum royalties paid for any year are to be credited only to that year. The final rulemaking has not adopted this request because allowing the minimum royalties to be credited to later years would defeat the purpose of requiring a minimum royalty, which is to encourage production, and because crediting is not authorized by the Mineral Leasing Act of 1920.

Section 3503.2–3 Limitation of overriding royalties.

Four comments opposed the inclusion in this section of the proposed rulemaking of the 1 percent limitation on overriding royalties. After a careful review of the comments, the final rulemaking has adopted the language of the proposed rulemaking with clarifying changes. However, the Department of the Interior will study the continuing need for these provisions and if a decision is made to eliminate them, the elimination will be the subject of a future rulemaking which will allow public comment.

Section 3503.2–4 Waiver, suspension or reduction of rental, minimum royalty or royalties.

One comment on this section of the proposed rulemaking recommended the elimination of the waiver and reduction of overriding royalty by the final rulemaking. The final rulemaking has not adopted the recommendation because the experience of the Department of the Interior in connection with the leasing of minerals on the public lands show that an excessive overriding royalty reduces the incentive of a lessee to produce from the lease. The excessive overriding royalty reduces the benefit the lessee obtains from production and can lead to an early abandonment of the lease. As the owner of the minerals covered by a lease, the United States is interested in obtaining maximum production and royalties from a lease and has an economic interest in all activities, including the imposition of an excessive overriding royalty that might reduce the level of production and benefit enjoyed by the public from the public lands and their resources. As discussed in the previous section, the issue of overriding royalty will be the subject of a study by the Department of the Interior.

Section 3503.3–1 Suspension of operations and production.

Three comments were received on this section of the proposed rulemaking. The comments questioned the authority for initiation of suspension of operations on a lease by the lessor. The authority to order or agree to a suspension of operations and production in the interest of conservation is found in 30 U.S.C. 209. Therefore, the final rulemaking adopts, without change, the language of the proposed rulemaking.

Section 3503.3–2 Suspension of operations.

Three comments on this section of the proposed rulemaking suggested that the final rulemaking add language that makes it clear that a suspension of operations is initiated by the lessee and such action is responded to by the authorized officer within 60 days. The final rulemaking has adopted this suggestion in part and amends the section to clarify who initiates the request for a suspension of operations and the response to be made by the authorized officer. The final rulemaking does not adopt the suggestion that the authorized officer must respond within 60 days. Under normal circumstances, an application will be processed in less than 60 days, but the processing work for very complex applications could

require more than 60 days, thus no purpose would be served by placing the 60-day requirement in the regulations for such cases.

Subpart 3504—Bonds

Eight comments, including a comment under § 3562.7 of the proposed rulemaking, address bonding in the proposed rulemaking. One comment questioned the need for bonds, recommending instead that those permittees or lessees who default on the terms and conditions of a lease be prosecuted. Three comments requested that bonds not be required until after issuance of the permit or lease, but prior to entry on the lands covered by the permit or lease because of their view that no liability occurs until after surface disturbance has occurred. These comments also expressed the view that until an exploration plan or mining plan has been filed, the authorized officer does not have sufficient information on which to base the amount of the bond. Two comments suggested that the final rulemaking expand the bonding provisions of the proposed rulemaking to include self bonding similar to that permitted by the regulations of the Office of Surface Mining (30 CFR 800.5(c)). Another comment correctly pointed out that the proposed rulemaking erroneously shows the minimum nationwide bond amount as $150,000 rather than $75,000 now required by the existing regulations. A suggestion made by another comment was that the language of the proposed rulemaking covering termination of liability be changed to require the release of existing bonds within 30 days of filing an acceptable alternative bond(s). A final comment expressed the view that the final rulemaking should provide that bond liability would not be terminated without notification from the surface management agency that reclamation requirements have been met.

All of these comments were carefully considered during the decisionmaking process on the final rulemaking. Bonds are required to protect the United States in the event the permittee or lessee defaults in the performance or observance of any of the terms, conditions or stipulations of the permit or lease and the permittee or lessee is either financially unable, or otherwise refuses, to correct the default, e.g., if a lessee refuses to pay royalty, the United States can collect from the surety. Thus, to ensure that the United States is protected, the final rulemaking adopts the provisions of the proposed rulemaking requiring that a bond be filed prior to issuance of a permit or lease. However, the authorized officer will use sound judgment in not setting bond amounts over and above that which is necessary to adequately protect the United States. The authorized officer will be able to adjust bond amounts when it is deemed necessary because § 3504.1–4(b) has been changed by the final rulemaking to allow lowering of bond amounts, as well as increasing bond amounts, when conditions warrant. In order to clearly show the applicability to statewide and nationwide, as well to individual permit and individual lease bonds, the final rulemaking places § 3504.1–4(b) of the proposed rulemaking in a new § 3504.1–6.

The suggestion to include self bonding has not been adopted by the final rulemaking because the adoption of the requirements of the Office of Surface Management regulations, even with much lower dollar amounts for "tangible net worth" and "fixed assets" would permit qualification by only very large companies, thus excluding most individual companies and lessees. The bonding issue is presently being reviewed by a Bureau of Land Management task force and any changes made as a result of that review will be incorporated into group 3500 through the rulemaking process.

The final rulemaking amends the proposed rulemaking to show that the minimum nationwide bond is $75,000, the same amount as in the existing regulations.

The suggestion to require the authorized officer to release bonds within 30 days of the filing of an acceptable alternative bond, the phrase used in the proposed rulemaking, has not been adopted by the final rulemaking because the existing surety's period of liability is merely terminated as of the date of an acceptable replacement bond, the phrase that has been adopted by the final rulemaking, is filed. The permittee or lessee and the existing surety continue to be responsible for any and all obligations that may have accrued on the permit or lease prior to the filing of the acceptable replacement bond. Only when an acceptable replacement bond which has been conditioned to accept all outstanding obligations under a permit or lease is filed can an existing bond be released.

The final rulemaking has not adopted the suggestion that the surface management agency must be notified prior to the termination of bond liability. This change is not needed because under standard Bureau of Land Management procedures, the period of bonded liability is not terminated until the authorized officer is assured that all terms and conditions, including any special stipulations, such as reclamation requirements, have been met.

Section 3506.3–3 Overriding royalty interests.

At the suggestion of one comment, the final rulemaking expands the provisions of the proposed rulemaking to clearly show that a filing fee is required with the filing of an overriding royalty assignment.

Section 3506.4 Permit or lease account status.

The proposed rulemaking provided that an assignment cannot be approved unless the account is in good standing. The current position of the Minerals Management Service is that it cannot provide the current financial status of an account without an audit. One comment, in recognition of this situation, pointed out that the requirement for an audit will not permit timely processing of assignments. For this reason, the final rulemaking expands the proposed rulemaking to provide a procedure which allows an assignee and his/her surety to accept all outstanding liabilities of an assignor in order to facilitate the timely approval of an assignment.

Subpart 3507 Fractional and Future Interest Permits and Leases.

A couple of comments were received on this subpart of the proposed rulemaking. The comments indicated some confusion about these provisions. After careful review of the provisions of the proposed rulemaking, the final rulemaking has adopted several clarifying amendments. The principal clarification allows noncompetitive leasing of future interests for lands which are part of an existing mining operation upon payment of the fair market value of the minerals at the time of vesting of title of the minerals in the United States because it would be unfair to allow the possibility of loss of reserves where a party has expended money and effort in developing a mine. Protection of the public interest is assured by requiring the payment of the fair market value of the minerals as a condition for receiving a lease.

Subpart 3508 Mineral Lease Exchange.

One comment on this subpart of the proposed rulemaking suggested that the final rulemaking include a statement requiring surface management agency consultation/consent. The comment was not adopted by the final rulemaking

because this subpart has been clarified to provide that a lease will be issued only in accordance with the regulations in group 3500 which includes the surface management agency consent requirements. Another comment on this subpart of the proposed rulemaking suggested the addition of language dealing with the presence of hazardous waste on lands proposed for an exchange. The final rulemaking has adopted this suggestion and added language that would prohibit a proposed exchange of lands found to contain hazardous waste.

Section 3509.1–1 Prospecting permits.

Two comments on this section of the proposed rulemaking requested clarification of this section. The final rulemaking amends the last sentence of the section to clarify that lands covered by a relinquishment are available for new applications upon the notation of the relinquishment on the official status records. One comment wanted to know why relinquished lands are not available until notation of the relinquishment on the official status records. The reason for this requirement is to give everyone equal notice of the availability of the lands.

Section 3509.1–2 Leases.

A comment on this section of the proposed rulemaking suggested that the final rulemaking specify that lands subject to a relinquishment shall be available for lease sale by application or motion of the Bureau of Land Management immediately upon notation of the relinquishment on the official status records. This comment has not been adopted by the final rulemaking because it is not needed in instances of competitive leasing.

Section 3509.3–1 Prospecting permits.

One comment on this section of the proposed rulemaking suggested that the final rulemaking should, for consistency, provide for notation of the expiration of a prospecting permit on the official status records. The official status records show the presence of a prospecting permit or an extension of such a permit. Since all prospecting permits have an initial term of two years and the extension, if any, is set by statute or regulation, an applicant for a prospecting permit can determine the date of expiration of a prospecting permit or extension by reviewing the official status records and case file. Further, the Bureau of Land Management's regulations provide a 60-day period to allow the holder of a prospecting permit sufficient time to file an application for a preference right lease. During that 60-day period, the expiration of an existing prospecting permit or extension will be noted on the official status records, giving the public adequate time to file on the lands if no application for a preference right lease is filed.

Section 3509.4–1 Prospecting permits.

This section of the proposed rulemaking was the subject of two comments. The first comment suggested that the final rulemaking amend the first sentence of this section if a companion comment on section 3509.4–2 is adopted by the final rulemaking. The comment has not been adopted by the final rulemaking because the companion comment has not been adopted.

The second comment on this section of the proposed rulemaking, which has been adopted by the final rulemaking, suggested the addition of a new paragraph that provides for notation of the official status records of the cancellation of an outstanding prospecting permit to give the public notice of the availability of the lands for application for a like prospecting permit.

Section 3509.4–2 Leases.

This section of the proposed rulemaking was the subject of two comments. One comment recommended that final rulemaking insert the phrase "rents and royalties." This comment has not been adopted by the final rulemaking because rents and royalties are a term and condition of a lease and are covered by that phrase in this section. At the suggestion in a second comment on this section, the final rulemaking has been expanded to include a new paragraph (c) that includes the cancellation authority of the Secretary of the Interior. The administrative cancellation of leases improperly issued, e.g., a lease mistakenly issued for lands in a designated wilderness area, was recognized as proper by the Supreme Court in *Boesche* v. *Udall*, 373 U.S. 472 (1963).

Section 3509.4–3 Bona fide purchaser.

One comment on this section of the proposed rulemaking expressed the view that the bona fide purchaser provision of the Mineral Leasing Act of 1920 is not applicable to asphalt in Oklahoma or hardrock minerals. The law authorizing the leasing of asphalt in Oklahoma, the Act of June 28, 1944 (58 Stat. 463, 483), makes the general provisions of section 27 of the Mineral Leasing Act of 1920 (30 U.S.C. 184), applicable. This reference includes later amendments of section 27. With regard to hardrock minerals, the Secretary of the Interior may establish any reasonable procedures for the management of leases for these minerals. This comment has not been adopted by the final rulemaking.

The language of the proposed rulemaking that conditioned the assignee's status as a bona fide purchaser upon approval of the assignment by the Bureau of Land Management has been deleted by the final rulemaking because it is inconsistent with judicial interpretation of section 27(h) of the Mineral Leasing Act of 1920 (30 U.S.C. 184(H)) (e.g., *Winkler* v. *Andrus*, 614 F.2d 707, 711–712).

Section 3510.1 Leasing procedures.

One comment on this section of the proposed rulemaking suggested the deletion of the word "entities" and its replacement with the word "applicants." This suggestion has been adopted by the final rulemaking because it clarifies the intent of the section. The final rulemaking has adopted this suggestion in §§ 3520.1, 3530.1, 3540.1, 3550.1, 3560.1 and 3570.1 to make the related sections consistent.

Section 3511.4 Readjustment.

Several comments on this and related sections of the proposed rulemaking recommended the deletion of the requirement for a 2-year notification prior to the end of the 20-year lease period. The comments also suggested the final rulemaking add language that would make readjustment effective, unless the authorized officer determines otherwise, during the pendency of an objection or appeal. The comments further requested that the final rulemaking clarify that a lessee must pay rental, minimum royalties and royalties, during the pendency of an objection or appeal. The payments would be those required by the terms and conditions of the lease prior to readjustment. As a result of the review of the comments on this section, the final rulemaking totally revises this section and the related sections on readjustment to incorporate the changes suggested in the comments.

Section 3511.7 Special stipulations.

One comment requested the deletion of this section of the proposed rulemaking on the basis that it gives the authorized officer a "blank check" to require stipulations in a lease, stipulations that should be required only in the mining plan. This comment has not been adopted by the final rulemaking because this section is intended to provide maximum flexibility

to the authorized officer because he/she is the official that is most knowlegeable on specific issues relating to a specific lease. Although the Bureau of Land Management also has the authority to place appropriate stipulations in a mining plan, including stipulations in a lease contract will condition the rights granted the lessee and provide greater protection to the resources involved.

Section 3512.1 Areas subject to prospecting.

Two comments on this section of the proposed rulemaking suggested that the final rulemaking retain the language of the existing regulations on this subject because of their view that the section in the existing regulations more adequately expresses the intent of the law. The final rulemaking has adopted a change in this section and related sections of the proposed rulemaking that clarifies which public domain and acquired lands are available for prospecting permits.

Section 3512.3–3 Exploration plans.

Several comments on this section and related sections of the proposed rulemaking recommended that the final rulemaking retain the provisions of the existing regulations which do not require the filing of an exploration plan until after issuance of the permit, but prior to entry on the lands covered by the prospecting permit. One comment suggested compromise language which has been adopted for this section and related sections by the final rulemaking.

The compromise requires the filing of the exploration plan when requested by the authorized officer, but only after preliminary adjudication of the application for the prospecting permit has been completed in order to determine such issues as the qualifications of the applicant, the availability of the lands covered by the application and the proper completion of the permit application form. Under this compromise, an applicant will not have to expend labor and money for developing an exploration plan until there is reasonable assurance that the permit can issue, but will allow the authorized officer to obtain the information needed for development of environmental studies. This process will also allow for the exploration plan and the prospecting permit to be approved simultaneously. In addition, the final rulemaking makes several changes for clarity.

Section 3512.8 Terms and conditions of permits.

Section 3512.8–1 of the proposed rulemaking has been amended by the final rulemaking to clarify that exploration operations that are part of an approved existing exploration plan may continue if the permittee has timely filed an application for extension of the permit. This change is necessary to comply with the law (see Solicitor's Opinion M–36943, 89 I.D. 173, 179 (1982); *Rosebud Coal Sales Co.* v. *Andrus*, Civil No. 78–261 (D. Wyo. October 17, 1979). This clarifying change is also made to the sections of the final rulemaking covering the duration of a permit for appropriate minerals to reflect this principle and to allow approved exploration activity to continue until the permit has been extended. Of course, any information obtained during this period may be used to support a preference right lease application.

This legal principle is also applicable to sodium, sulphur, asphalt and hardrock leases which reach their expiration date while a timely filed application for renewal is pending.

Section 3513.1–2 Contents of application.

One comment on this section of the proposed rulemaking recommended an amendment that would limit the application for a preference right lease to those lands reasonably needed to develop the discovery. The final rulemaking has not adopted the recommendation in this section or any of the related sections because the Mineral Leasing Act of 1920 and the regulations provide that a preference right lease applicant may have any or all of the lands covered by the prospecting permit that is the basis of the preference right lease, but no additional lands.

Subpart 3514—Exploration License

One comment on this subpart of the proposed rulemaking expressed concern that the rulemaking might be broadly applicable and recommended that the final rulemaking limit its applicability if this interpretation was correct. The final rulemaking has not adopted the recommended change in this subpart or any of the related subparts because they are only applicable to lands under the jurisdiction of the Bureau of Land Management and would not involve lands under the jurisdiction of another surface management agency.

Three comments on this subpart of the proposed rulemaking were directed to § 3514.5. One suggested that the information submitted in connection with an exploration license should remain proprietary for a period of 5 years. The other comment expressed the view that the final rulemaking should not require the submission of any information obtained in connection with an exploration license until the lease has issued or until one year after the expiration of the exploration license. The final rulemaking has not adopted either of the suggestions but does amend the proposed rulemaking in this and all related sections to make them consistent with the provisions of the Freedom of Information Act.

Section 3515.4 Bid opening.

One comment on this section of the proposed rulemaking suggested that the final rulemaking amend this section and all related sections to specifically include procedures for both sealed bids and public auctions. The final rulemaking has not adopted this suggestion because the rulemaking allows the authorized officer to determine what would be the best procedure to be used in connection with a lease sale and to set forth in the notice of competitive sale the bidding methods and the procedure that he/she determines to be the best bidding method for that particular sale.

Section 3517.1 Use permits.

One comment on this section of the proposed rulemaking indicated that the final rulemaking needed to clarify that the section is not applicable to lands within the boundaries of the National Forest System. The final rulemaking has adopted the recommended change and the section clearly states that it is not applicable to lands within the National Forest System

Section 3517.1–2 Rental.

A comment on this section of the proposed rulemaking, which has been adopted by the final rulemaking, expressed the view that the section could be clarified and suggested language to that end.

Section 3521.2–1 Rental.

The final rulemaking has adopted the suggestion of one comment on this section of the proposed rulemaking to clearly show that the rental for a lease is due annually on or before January 1. This same change has been made by the final rulemaking in the other related sections.

Section 3521.2–2 Production royalty.

A comment on this section of the proposed rulemaking expressed the view that the minimum production royalty required by the section was too high. The final rulemaking has adopted the language of the proposed rulemaking because the minimum production royalty required for a lease for sodium is set by the minimum production royalty required for a lease for sodium is set by

the Mineral Leasing Act of 1920 (30 U.S.C. 262) at a minimum of 2 percent. After the lease is issued, the lessee can apply under § 3503.2–4 for waiver, suspension or reduction of rental or minimum royalty or reduction of royalty.

Subpart 3526 Noncompetitive Leasing—Fringe Acreage Leases and Lease Modifications

One comment on this subpart of the proposed rulemaking suggested that modified or fringe acreage lease applications be made public in the same manner as competitive leases to ensure that the final result of private negotiations in connection with such leases would be available to the public just as the conditions of competitive leases are known to the public. The final rulemaking has not adopted this suggestion because the case files on all leases and lease applications are open and available for public review. Further, the sales under this section are not negotiated sales, but are based on the payment of the fair market value of the mineral covered by the lease.

Section 3528.1 Applications.

There comments on this section and related sections of the proposed rulemaking questioned the need for the requirement to file an application for renewal at least one year before lease expiration. The final rulemaking has adopted this suggestion in this section and all related sections and requires the filing of the application at least 90 days before lease expiration, rather than the one year required by the proposed rulemaking.

Section 3530.3 Allowable acreage holdings.

The Bureau of Land Management received two hundred and twenty-three comments in response to its request for public comment on this section. All of the comments requested an increase in the allowable acreage for potassium. Two hundred six of the comments requested an increase in lease holdings to 51,200 acres in any one state in order to allow current lessees to obtain new leases while retaining their present lease holdings. This would permit them to be competitive with foreign markets. Seventeen comments requested the acreage be increased to 153,600 acres in any one state to allow adequate acreage for extraction from concentrated brines. These comments have been adopted in part by the final rulemaking, in that it allows 51,200 acres to be held under lease and prospecting permits. To provide for adequate acreage for extraction from concentrated brines, the final rulemaking permits the authorized officer to allow additional holdings, the acreage to be determined on a case-by-case basis.

Section 3533.3 Issuance of lease.

The comment on this section of the proposed rulemaking indicated that the proposed rulemaking contained a phrase that was not part of the existing regulations and requested that the final rulemaking delete it. A careful review of the comment and the existing regulations shows that the phrase in question is part of the existing regulations. Therefore, the final rulemaking has adopted the proposed rulemaking without change.

Part 3550—Asphalt in Oklahoma and Gilsonite (Including all Vein-Type Hydro-Carbons).

This part of the proposed rulemaking was the subject of five comments.The proposed rulemaking provided for all competitive leasing program for "Gilsonite" because of the assumption that all "Gilsonite" deposits were already known. Although most of the unleased Federal lands in the Uintah Basin near Bonanza, Utah, embrace known deposits of "Gilsonite," the comments received on this part indicate that there are other lands in Utah and Colorado which may contain "Gilsonite" deposits, but exploratory work is needed to determine their existence and workability. For this reason, the prospecting permit/preference right lease system used in other sections of the proposed rulemaking is being reinstituted by the final rulemaking in the revised part 3550. The provisions covering asphalt in Oklahoma have been moved to part 3570.

The preamble of the proposed rulemaking stated that as of the date of the publication of the proposed rulemaking, the Bureau of Land Management would no longer issue prospecting permits for "Gilsonite." This statement was the subject of several comments, all of which asked that all existing applications for prospecting permits be reviewed on a case-by-case basis and if the lands do not contain a known deposit of "Gilsonite," that the permits be issued, all else being proper. In response to these comments, the Bureau of Land Management will process all outstanding applications for prospecting permits under the procedures provided by the final rulemaking.

Two comments on this part of the proposed rulemaking were of the view that the maximum acreage set for a fringe acreage lease or lease modification for "Gilsonite" was excessive. The view expressed in the comments was not adopted by the final rulemaking because the maximum lease size for "Gilsonite" is set by statute and this limitation, together with the other requirements of this part for a fringe acreage lease and lease modification should prevent excessive lease acreage holdings. In addition, several comments pointed out that the acreage for a fringe acreage lease or a modified lease for asphalt was incorrect in the proposed rulemaking. The final rulemaking, in recognition of this error, changes the acreage figure to 640 acres for asphalt.

One of the comments pointed out the term "Gilsonite" is a registered trademark name. The owner of the trademark indicated in their comments that they would not object to the use of the term in the regulations if it were recognized as a registered trademark. The trademark registration papers indicate that the trademarked term is for a commercial product rather than for ore in the bround as the Congress used the term in the Combined Hydrocarbon Leasing Act of 1981 and in other statutes at least as far back as the Act of June 7, 1897 (30 Stat. 62, 87). The final rulemaking, when using the term "Gilsonite,," capitalizes the word and sets it off in quotes to avoid controversy over the registered status of the term.

Part 3560—Hardrock minerals

The existing regulations on hardrock mineral leasing provide that the discovery of a valuable mineral deposit within the term of a prospecting permit entitles the permittee to a preference right lease. The proposed rulemaking reorganized and reformatted this provision but did not change the sense of that provision. A comment requested that the final rulemaking change this provision so that discovery of a valuable mineral deposit during the term of a prospecting permit would entitle the permittee to be preferentially considered for a lease only. The comment also requested that the final rulemaking provide for rejection of a preference right lease for lands under the jurisdiction of a surface management agency outside of the Department of the Interior if that agency withholds its consent to lease. The existing regulations and the proposed rulemaking both provide for prospecting permits, as well as preference right leases, to be stipulated so that lease issuance, exploration and/or development of any anticipated valuable mineral deposit are accomplished in an environmentally acceptable way and to ensure the adequate utilization of the lands for the primary purposes for which they have

been acquired or are being administered. The concerns expressed in the comment were given careful consideration and the Bureau of Land Management determined that nothing in the proposed rulemaking was intended to change the current practice of requiring the inclusion of conditional stipulations in prospecting permits in appropriate cases. Because of the existence of this stipulation authority, the recommended changes contained in this comment have not been adopted by the final rulemaking.

Several comments on § 3560.3–1 of the proposed rulemaking pointed out that the citation of the Weeks Act was incorrect. The final rulemaking has amended the citations in paragraph (a) and set them off in quotes to show that they are a direct quotation from Reorganization Plan No. 3 of 1946.

The final rulemaking has adopted the suggestion from one comment on § 3560.3–3 of the proposed rulemaking to add the word "Alaska" to the title of the section to eliminate any possible confusion between lands with similar titles in Alaska and in New Hampshire.

Several comments on § 3560.4 of the proposed rulemaking objected to the proposed rulemaking's elimination of the phrase "in any one state" that appeared in the existing regulations. The final rulemaking has added this phrase which was inadvertently omitted by the proposed rulemaking.

Several comments on § 3560.7 of the proposed rulemaking objected to the section because it appeared to have broad application. This section of the proposed rulemaking was not intended to authorize specimen collection on Federal lands but to recognize that this activity is regulated by the appropriate surface management agency. A change has been adopted by the final rulemaking to reflect this intent.

A comment on § 3560.3–1 of the proposed rulemaking, as well as other related sections, suggested that the annual rental payments for prospecting permits be moved to part 3500. The final rulemaking has not adopted the suggestion because it is a logical portion of the filing requirements for a prospecting permit which is set forth in the part for each individual mineral.

Two comments on the acreage limitation provisions of § 3562.3–2 of the proposed rulemaking suggested that the acreage for a single prospecting permit be increased. The final rulemaking has not adopted this suggestion because a permittee can hold any number of permits as long as the total acreage of all leases and permits does not exceed 20,480 acres in any one state.

One comment on § 3562.8–4 of the proposed rulemaking expressed the view that a provision that appears in § 3501.2–6(b) of the existing regulations should be added to this section by the final rulemaking. The final rulemaking has not adopted this suggestion because the language discussed in the comment appears in § 3500.9–2 of the final rulemaking and does not belong in this section.

Several comments on § 3562.9–1 of the proposed rulemaking expressed the view that the requirement for proof for entitlement to an extension of a prospecting permit is too specific. The final rulemaking has not made any change in this section because the primary term of the prospecting permit allows sufficient time to begin exploration and any extension is discretionary and should only be granted upon an adequate showing that steps are being taken to determine the existence or workability of a valuable mineral deposit.

A few comments on § 3563.1–2 of the proposed rulemaking requested that the allowable acreage for a single hardrock preference right lease be increased to 5,120 acres. The final rulemaking has not adopted this request because a preference right lease holder can hold any number of leases as long as the total acreage for all leases and permits does not exceed 20,480 acres.

One comment on § 3563.2 of the proposed rulemaking, which was improperly numbered, suggested the addition of language permitting the Secretary of Agriculture to request from a preference right lease applicant supplemental data for use in preparing environmental analyses and special stipulations. The final rulemaking, in addition to properly numbering the section, has added language that adopts the comment's suggestions.

One comment specifically requested that subpart 3505 of the existing regulations be retained by the final rulemaking. Since subpart 3505 of the existing regulations affects only hardrock minerals, the proposed and final rulemakings have revised those provisions and moved them to subpart 3567, which is entitled "Development contracts."

Part 3570—Special leasing areas

The final rulemaking has renumbered this part as part 3580 in order to accommodate the addition of a new part 3550 for "Gilsonite," which has been included in part 3550 with asphalt in Oklahoma. The final rulemaking has moved asphalt in Oklahoma to a new part 3570.

Two comments on the part of the proposed rulemaking suggested that the leasing provisions for gold and silver in confirmed private land grants and the reserved minerals in certain lands patented to the State of California may no longer be needed. The comments requested figures on the number of applications filed under these provisions during the past 25 years. It is possible that the special leasing provisions are no longer needed. However, the final rulemaking continues the provisions in the event that an application is filed.

One comment on § 3572.3 of the proposed rulemaking requested that exploration licenses be included in the consent provisions of this part. The final rulemaking has not adopted this request because exploration licenses are only issued for lands under the jurisdiction of the Bureau of Land Management and no consent is required.

Two comments on § 3573.2 of the proposed rulemaking recommended that the phrase "or permit" be deleted. The final rulemaking has not adopted this recommendation in recognition of the fact that prospecting permits may be issued for leasable minerals in the Shasta and Trinity Units of the Whiskeytown—Shasta—Trinity National Recreation Area.

One comment on § 3573.4–3 of the proposed rulemaking suggested that the reference to the National Park Service in this section is incorrect. The final rulemaking has removed the reference to the National Park Service and replaced it with a reference to the United States Forest Service.

One comment on § 3575.3 of the proposed rulemaking requested that the special status afforded holders of unperfected mining claims in the White Mountains National Recreation Area—Alaska be recognized by the final rulemaking. The final rulemaking has adopted a number of changes in subpart 3575 to recognize the special status afforded holders of unperfected mining claims.

One comment on § 3575.3–2 of the proposed rulemaking expressed particular concern about the two-year time limit on the filing of mining claimant preference right lease applications. The final rulemaking has adopted a change to this section which makes it clear that the two-year period for filing of applications for mining claimant preference right leases commences on the date the Secretary of the Interior opens the lands to permit the removal of minerals, consistent with the provisions of the Alaska National Interest Lands Conservation Act. The Bureau of Land Management expects

that the lands will be opened in 1986 by publication of a public land order in the Federal Register, which order also will be posted in the Bureau's Alaska offices.

One comment on § 3575.4–1 of the proposed rulemaking expressed the view that the survey required for exploration licenses was excessive. The proposed rulemaking did not intend to require a survey for exploration licenses, but only for mining claim preference right leases because those leases may include only lands within mining claims. The proposed rulemaking has been adopted without change by the final rulemaking.

A comment on § 3575.5–6 of the proposed rulemaking opposed the requirement for publication and posting of the notice of participation and requested its deletion. The final rulemaking has not adopted this request in this or any of the related sections because the Bureau of Land Management, in meeting its responsibility for protecting the public lands and their resources, takes responsible steps to limit the number of entities that are engaged in activities that can cause needless damage to those lands and resources. Reducing, where possible, the number of individuals or corporations entering the same public lands for similar or identical exploration purposes assist in this effort.

Subpart 3576 Nevada

A comment on § 3576.1–1 of the proposed rulemaking requested that the final rulemaking allow the processing of all applications for sand and gravel in Nevada on file on April 12, 1985, the date of publication of the proposed rulemaking, be processed. The final rulemaking has adopted this request and all applications for sand and gravel in Nevada pending on April 12, 1985, will be processed under § 3563.2 of the existing regulations. Any leases issued as a result of these applications, will be subject to the provisions of this final rulemaking.

Two comments on § 3576.1–2 of the proposed rulemaking questioned the provision limiting the assignability of existing sand and gravel leases. The final rulemaking, in recognition of the question raised in the comments, deletes the language on limitation on assignments and adopts language which limits lease renewals to those leases producing sand and gravel or which are a part of an existing sand and gravel operation at the expiration of the lease term. The adoption of this language by the final rulemaking authorizes the renewal of a producing lease when the lessee agrees to any additional terms and conditions, a discretionary authority that was reserved to the authorized officer in § 3563.2–4(g) of the existing regulations.

In recognition of the addition of a new separate part for "Gilsonite," the final rulemaking has amended paragraph A of the first provision of the proposed rulemaking by deleting the phrase "part 3570 as part 3580" and replacing it with the phrase "part 3570 as part 3590". It also amends paragraph B of the proposed rulemaking by deleting the phrase "adding a new part 3570" and replacing it with the phrase "adding new parts 3570 and 3580".

Editorial and grammatical corrections have been made as needed.

The principal author of this final rulemaking is Marcia E. Rohn, Division of Solid Mineral Leasing, assisted by the staff of the Office of Legislation and Regulatory Management, both of the Bureau of Land Management, and the staff of the Office of the Solicitor, Department of the Interior.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The final rulemaking is a revision of existing regulations and will not change in any substantive manner the procedures imposed by the existing regulations. The principal purpose of the final rulemaking is to streamline and simplify the procedures contained in the existing regulations. This will benefit all users equally.

The information collection requirements in this final rulemaking have already been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004–0030, 1004–0121 and 1004–0142.

List of Subjects

43 CFR Part 3500

Mineral royalties, Public lands—classification, Public lands—mineral resources, Surety bonds.

43 CFR Part 3510

Administrative practice and procedure, Mines, Public lands—mineral resources, Surety bonds.

43 CFR Part 3520

Administrative practice and procedure, Mines, Public lands—mineral resources, Surety bonds.

43 CFR Part 3530

Administrative practice and procedure, Mines, Public lands—mineral resources, Surety bonds.

43 CFR Part 3540

Administrative practice and procedure, Mines, Public lands—mineral resources, Surety bonds.

43 CFR Part 3550

Administrative practice and procedure, Mines, Public lands—mineral resources, Surety bonds.

43 CFR Part 3560

Administrative practice and procedure, Mines, Public lands—mineral resources, Surety bonds.

43 CFR Part 3570

Administrative practice and procedure, Mines, Public lands—mineral resources, Surety bonds.

43 CFR Part 3580

Administrative practice and procedure, Mines, Public lands—mineral resources, Surety bonds.

43 CFR Part 3590

Mineral royalties, Public lands—mineral resources.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a), Reorganization Plan No. 3 of 1946 (16 U.S.C. 520), and the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm–2—460mm–4), Parts 3500, 3510, 3520, 3530, 3540, 3550, 3560, 3570, 3580 and 3590, Group 3500, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations are amended as set forth below.

J. Steven Griles,

Assistant Secretary of the Interior.

March 24, 1986.

Group 3500—[Revised]

1. Group 3500 is revised:

A. By redesignating Part 3570 as part 3590:

B. By Revising Parts 3500, 3510, 3520, 3530, 3540, 3550, and 3560, and adding new Parts 3570 and 3580 to read as follows:

Group 3500—Leasing of Solid Minerals Other than Coal and Oil Shale

Note.—The information collection requirements contained in Parts 3500, 3510,

3520, 3530, 3540, 3550, 3560, and 3570 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0030, 1004–0121 and 1004–0142. The information is being collected to permit the authorized officer to determine whether an applicant is qualified to hold a lease for exploration, development and utilization of leasable minerals other than coal and oil shale on the public lands. The information will be used to make this determination. A response is required to obtain a benefit.

PART 3500—LEASING OF SOLID MINERALS OTHER THAN COAL AND OIL SHALE

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Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix); Section 3 of the Act of September 1, 1949 (30 U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508(b)); the Act of June 8, 1926 (30 U.S.C. 291–293); the Act of March 3, 1933, as amended (47 Stat. 1487); Section 10 of the Act of August 4, 1939 (43 U.S.C. 387); the Act of October 8, 1964 (16 U.S.C. 460n et seq.); the Act of November 8, 1965 (16 U.S.C. 460q et seq.); the Act of October 2, 1968 (16 U.S.C. 90c et seq.); the Act of October 27, 1972 (16 U.S.C. 460dd et seq.); the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm–2–460mm–4); the Independent Offices Appropriations Act (31 U.S.C. 9701).

Subpart 3500—Leasing of Solid Minerals Other Than Coal and Oil Shale—General

§ 3500.0–3 Authority.

The statutory authority for the regulations in this group is as follows:

(a) *Leasable minerals.*—(1) *Public domain.* The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181–287), including the Act of February 7, 1927 (30 U.S.C. 281–287), the Act of April 17, 1926 (30 U.S.C. 271–276), and the Act of June 28, 1944 (58 Stat. 483–485), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(2) *Acquired lands.* The Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(b) *Hardrock minerals.* (1) Section 402, Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix) transferred the functions of the Secretary of Agriculture relative to the leasing or other disposal of minerals to the Secretary of the Interior for lands acquired under the following statutes: (i) the Act of March 4, 1917 (16 U.S.C. 520); (ii) Title II of the National Industrial Recovery Act of June 16, 1933 (40 U.S.C. 401, 403(a) and 408); (iii) the 1935 Emergency Relief Appropriation Act of April 8, 1935 (48 Stat. 115, 118); (iv) section 55 of Title I of the Act of August 24, 1935 (49 Stat. 750, 781); (v) the Act of July 22, 1937 (50 Stat. 522, 525, 530), as amended July 28, 1942 (7 U.S.C. 1011(c) and 1018); and (vi) section 3 of the Act of June 28, 1952 (66 Stat. 285).

(2) Section 3 of the Act of September 1, 1949 (30 U.S.C. 192c) authorized the issuance of mineral leases or permits for the exploration, development and utilization of minerals, other than those covered by the Mineral Leasing Act for Acquired Lands, in certain lands added to the Shasta National Forest by the Act of March 19, 1948 (62 Stat. 83).

(3) The Act of June 30, 1950 (16 U.S.C. 508(b)) authorizes leasing of the hardrock minerals on National Forest lands in Minnesota.

(c) *Special acts.* (1) Gold, silver or quicksilver in confirmed private land grants are covered by the Act of June 8, 1926 (30 U.S.C. 291–293).

(2) Reserved minerals in lands patented to the State of California for parks or other purposes are covered by the Act of March 3, 1933 (47 Stat. 1487), as amended by the Act of June 5, 1936 (49 Stat. 1482) and the Act of June 29, 1936 (49 Stat. 2026).

(3) *National Park Service Areas.* Congress authorized mineral leasing, including the leasing of nonleaseable minerals in the manner prescribed by section 10 of the Act of August 4, 1939 (43 U.S.C. 387), in the following national recreation areas: (i) Lake Mead National Recreation Area—The Act of October 8, 1964 (16 U.S.C. 460n–et seq.) Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area—The Act of November 8, 1965 (16 U.S.C. 460q–et seq.); (iii) Ross Lake and Lake Chelan National Recreation Areas—The Act of October 2, 1968 (16 U.S.C. 90c–et seq.) Glen Canyon National Recreation Area—The Act of October 27, 1972 (16 U.S.C. 460dd et seq.).

(4) *Shasta-Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area.* Section 6 of the Act of November 8, 1965, (16 U.S.C. 460q–et seq.) authorizes mineral leasing, including the leasing of nonleasable minerals in the manner prescribed by section 3 of the Act of September 1, 1949, (30 U.S.C. 192c), on lands within the Shasta-Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area.

(5) *White Mountains National Recreation Area.* Sections 403, 404, and 1312 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm–2 through 460mm–4) authorize the Secretary of the Interior to permit the removal of the nonleasable minerals from lands or interests in lands within the recreation area in the manner described by section 10 of the Act of August 4, 1939, as amended (43 U.S.C. 387), and the removal of leasable minerals from lands or interest in lands within the recreation area in accordance with the mineral leasing laws.

(6) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) authorizes the management and use of the public lands.

(7) The Independent Offices Appropriation Act (31 U.S.C. 9701) authorizes agencies to charge fees to recover the costs of providing services or things of value.

§ 3500.0–5 Definitions.

As used in Group 3500, the term:

(a) "Secretary" means the Secretary of the Interior.

(b) "Director" means the Director, Bureau of Land Management.

(c) "State Director" means an employee of the Bureau of Land Management who has been designated as the chief administrative officer of one of the Bureau's 12 administrative areas designated as "States".

(d) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in group 3500 of this title.

(e) "Proper BLM office" means the Bureau of Land Management office having jurisdiction over the lands subject to the regulations in group 3500 of this title (see 43 CFR subpart 1821).

(f) "Public domain lands" means lands, including mineral estates, which never left the ownership of the United States, lands which were obtained by the United States in exchange for public domain lands, lands which have reverted to the ownership of the United States through the operation of the public land laws, and others specifically identified by Congress as part of the public domain.

(g) "Acquired lands" means lands, including mineral estates, which are not public domain lands and which the United States obtained through purchase, gift, or condemnation, and includes lands previously disposed of under the public land laws including the mining laws.

(h) "Leasable minerals" means the chlorides, sulphates, carbonates, borates, silicates or nitrates of potassium or sodium and related products; sulphur in the States of Louisiana and New Mexico and on all acquired lands; phosphate, including associated and related minerals; asphalt in certain lands in Oklahoma; and gilsonite (including all vein-type solid hydrocarbons).

(i) "Valuable deposit" means a mineral occurrence where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his/her labor and means, with a reasonable prospect of success, in developing a valuable mine.

(j) "Chiefly valuable" means a valuable deposit where there is no significant conflict between the extraction of sodium, sulphur or potassium and any non-mineral disposition of lands. Where such extraction conflicts with other disposition, the lands shall be deemed chiefly valuable for sodium, sulphur or potassium extraction if the economic value of the lands for extraction of such minerals exceeds its economic value for any non-mineral disposition.

(k) "Act" means the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.).

(l) "Service" means the Minerals Management Service.

(m) "Bureau" means the Bureau of Land Management.

(n) "Hardrock minerals" means those locatable minerals for which a mineral patent may be obtained under the Mining Law of 1872 and which are not leasable minerals as defined in paragraph (h) of this section and oil, gas, coal and oil shale or mineral materials disposable under Group 3600 of this title. Hardrock minerals include, but are not limited to, copper, lead, zinc, magnesium, nickel, tungsten, gold, silver, bentonite, uranium, barite, feldspar and fluorspar.

§ 3500.1 Nondiscrimination.

Any person acquiring a lease under Group 3500 shall comply fully with the equal opportunity provisions of Executive Order 11246 of September 24, 1965, as amended, and the regulations and relevant orders of the Secretary of Labor (41 CFR Chapter 60) and 43 CFR Part 17.

§ 3500.2 False statements.

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for anyone knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

§ 3500.3 Unlawful interests.

No member of, or delegate to, Congress, or Resident Commissioner, and no employee of the Department of the Interior, except as provided in part 20 of this title, shall be entitled to acquire or hold any Federal lease, or interest therein. (Officer, agent or employee of the Department—See 43 CFR Part 20; Member of Congress—See R.S. 3741; 41 U.S.C. 22; 18 U.S.C. 431–433)

§ 3500.4 Appeals.

Any party adversely affected by a decision of the authorized officer made pursuant to the provisions of Group 3500 of this title shall have a right of appeal pursuant to part 4 of this title.

§ 3500.5 Filing of documents.

(a) All necessary documents shall be filed in the proper BLM office. A document shall be considered filed

when it is received in the proper BLM office.

(b) All information which is submitted to the Bureau under the regulations in this group shall be available to the public unless exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552), or unless otherwise provided in this group.

§ 3500.6 Multiple development.

The granting of a permit or lease for the prospecting, development or production of deposits of any particular mineral shall not preclude the issuance of other permits or leases for the same lands for deposits of other minerals with suitable stipulations for simultaneous operation, or the allowance of applicable entries, locations or selections of leased lands with a reservation of the mineral deposits to the United States. Each permit or lease shall reserve the right to allow any other uses, or to allow disposal, of the leased lands that will not unreasonably interfere with the exploration and mining operations of the permittee or lessee and the permittee/lessee shall make all reasonable efforts to avoid interference with such authorized uses.

§ 3500.7 Land use plans and environmental considerations.

(a) Any lease or permit issued under Group 3500 of this title shall be issued in conformance with the decisions, terms and conditions of a comprehensive land use plan for the mineral deposit in question.

(b) Before a lease or permit is issued, the authorized officer or the appropriate surface management agency shall comply with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(c) Leases and permits shall be issued in a manner consistent with any unsuitability designation made under § 1610.7-1(b) of this title.

§ 3500.8 Lands not subject to leasing.

The following lands are not subject to leasing under the provisions of group 3500:

(a) Lands within the boundaries of any unit of the National Park System, except as authorized by law;

(b) Lands within Indian Reservations, except the Uintah and Ouray Indian Reservation, Hillcreek Extension, State of Utah;

(c) Lands within incorporated cities, towns and villages;

(d) Lands within the National Petroleum Reserve—Alaska and oil shale reserves and within the national petroleum reserves;

(e) Lands acquired by the United States for development of helium, fissionable material deposits or other minerals essential to the defense of the country, except leasable minerals;

(f) Lands acquired by foreclosure or otherwise for resale;

(g) Acquired lands reported as surplus under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.); and

(h) Any tidelands or submerged coastal lands within the continental shelf adjacent or littoral to any part of lands within the jurisdiction of the United States.

§ 3500.9 Consent and consultation.

§ 3500.9-1 Federal lands administered by agencies outside of the Department of the Interior.

(a) Unless consent is required by law, public domain lands, the surface of which is administered by an agency outside of the Department of the Interior, shall be permitted or leased only after Bureau of Land Management has consulted with the surface management agency.

(b) Acquired lands shall only be permitted or leased with the written consent of the head or other appropriate official of the surface management agency.

(c) An applicant may pursue the administrative remedies provided by a particular surface management agency where such agency has required special stipulations in the lease or permit, or has refused consent to issuance of the lease or permit. If the applicant notifies the authorized officer within 30 days of receipt of the Bureau's decision that he/she has requested the surface management agency to reconsider its decision, the time for filing an appeal under part 4 of this title is suspended until a decision is reached by such agency.

§ 3500.9-2 State's or charitable organization's ownership of surface overlying Federally-owned minerals.

Where the United States has conveyed title to, or otherwise transferred the control of the surface of lands to any State or political subdivision, agency or instrumentality thereof, or a college or any other educational corporation or association, or a charitable or religious corporation or association, such party shall be given written notification by certified mail of the application for permit or lease and shall be given a reasonable time, not to exceed 90 days, within which to suggest any lease stipulations deemed necessary for the protection of existing surface improvements or uses, to set forth the facts supporting the necessity of the stipulations or file any objections it may have to the issuance of the lease or permit. Where a party controlling the surface opposes the issuance of a lease or permit or wishes to place such restrictive stipulations, but the facts submitted in opposition to issuance or concerning the necessity for restrictive stipulations expressed by the party controlling the surface do not provide adequate basis for such action, the final decision as to whether to issue the lease or permit shall be based on a determination by the authorized officer as to whether or not the interests of the United States would best be served thereby.

§ 3500.9-3 Management of Federal minerals from reserved mineral estates.

Where nonmineral public land disposal statutes provide in conveyances of title that all or certain minerals shall be reserved to the United States together with the right to prospect for, mine and remove the minerals under applicable law and regulations as the Secretary may prescribe, the lease, sale or disposal and administration and management of the use of such minerals shall be accomplished under the regulations of subchapter C of this title. Such mineral estates include, but are not limited to, those that have been or will be reserved under the authorities of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.), the Small Tract Act of June 1, 1938, as amended (43 U.S.C. 682(b)) and the Federal Land Policy and Management Act of 1969 (43 U.S.C. 1701 et seq.).

Subpart 3501—Descriptions and Acreage

§ 3501.1 Land descriptions.

§ 3501.1-1 Public domain.

Each application shall contain a complete and accurate description of the lands for which the lease or permit is desired. The lands applied for shall be in reasonably compact form.

(a) If the lands have been surveyed under the public land rectangular system, each application shall describe the lands by legal subdivision, section, township and range. Generally, a quarter-quarter section or a lot is the smallest legal subdivision for which an application may be made.

(b) When protracted surveys have been approved and the effective date thereof published in the **Federal Register**, all applications for lands shown on such approved protracted surveys shall describe the lands in the same manner as provided in paragraph

(a) of this section for officially surveyed lands.

(c) If the lands have neither been surveyed on the ground nor shown on the records as protracted surveys, each application shall describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys.

(d)(1) Prior to the issuance of a lease, all unsurveyed lands in the lease shall be surveyed.

(2) On a noncompetitive lease, the survey for unsurveyed lands shall be at the expense of the applicant.

(3) On a competitive lease, the survey of unsurveyed lands shall be at the expense of the United States.

§ 3501.1-2 Acquired lands.

(a)(1) If the lands have been surveyed under the rectangular system of public land surveys, the description shall conform to that system and the lands shall be described by legal subdivision, section, township, and range. Generally, a quarter-quarter section of a lot is the smallest legal subdivision for which an application may be made.

(2) Where the description cannot conform to the public land surveys, any boundaries which do not so conform shall be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner. If not surveyed but within the area of the public land surveys, the lands shall be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected to a reasonably nearby official survey corner by courses and distances. Each application shall be accompanied by a map upon which the desired lands are clearly marked showing their location with respect to the administrative unit or project of which they are a part.

(b) If the lands have not been surveyed under the rectangular system of public land surveys, and the tract is not within the area of the public land surveys, it shall be described as in the deed or other document by which the United States acquired title to the lands or minerals. If the desired lands constitute less than the entire tract acquired by the United States, they shall be described by courses and distances between successive angle points on the boundary of the tract, tying by course and distance into the description in the deed or other document by which the United States acquired title to the lands. In addition, if the description in the deed or other document by which the United States acquired title to the lands does not include the courses and distances between the successive angle points on the boundary of the desired tract, the description in the application shall be expanded to include such courses and distances. Each application shall be accompanied by a map upon which the desired lands are clearly marked showing their location with respect to the administrative unit or project of which they are a part.

(c) If an acquisition tract number has been assigned by the acquiring agency to the identical tract desired, a description by such tract number shall be accepted in lieu of the description required in paragraphs (a)(2) and (b) of this section. However, such application shall be accompanied by the map required by paragraphs (a)(2) and (b) of this section.

§ 3501.1-3 Accreted lands.

Where an application includes any accreted lands that are not described in the deed to the United States, such accreted lands shall be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions belong.

§ 3501.2 Computing acreage holdings.

(a) In computing acreage holdings or control, the accountable acreage of a party owning any interest, either directly or indirectly, shall be such party's proportionate part of the total lease and permit acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be such party's proportionate part of the corporation's or association's accountable acreage, except that no party shall be charged with its pro rata share of any acreage holdings of any association or corporation, unless it is the beneficial owner of more than 10 percent of the stock or other instruments of ownership or control of such association or corporation.

(b) The amount of acquired lands acreage for leasable minerals that may be held under lease or permit may not be in excess of the amount of public domain acreage for the same minerals permitted to be held under the Act. Public domain lease holdings shall not be charged against acquired lands lease holdings and vice versa; such respective holdings shall not be interchangeable.

(c) Where the United States owns only a fractional interest in the mineral resources of the lands involved, only that part of the total acreage involved in the lease which is proportionate to the ownership by the United States of the mineral resources therein shall be charged as acreage holdings. The acreage embraced in a future interest lease is not to be charged as acreage holdings until the lease for the future interest takes effect.

Subpart 3502—Qualification Requirements

§ 3502.1 Who may hold leases and permits.

(a) Leases and permits may be held only by citizens of the United States, associations (including partnerships and trusts) of such citizens, corporations organized under the laws of the United States or of any State or territory thereof. Citizens of a foreign country may only hold interest in leases or permits through stock ownership, stock holding or stock control.

(b) Citizens of a foreign country may only hold interests in leases and permits for leasable minerals if the laws, customs or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States. A list of those countries denying similar or like privileges is available from any Bureau office.

(c) A mineral lease or permit shall not be issued to a minor. Leases or permits may be issued to a legal guardian or trustee of a minor.

§ 3502.2 Qualifications and holdings statements.

§ 3502.2-1 Filing of evidence.

Evidence of qualifications required by this section may be filed separately in the proper BLM Office. Thereafter, a reference by serial number to the record in which such evidence is filed, together with a statement as to any amendments, shall be acceptable in lieu of resubmitting the evidence with each application. It is the responsibility of applicants and lessees to assure that such evidence is current and accurate. An application referring to the serial number may be submitted only to the Bureau office where the evidence of qualifications is on file.

§ 3502.2-2 Individuals.

To qualify to hold a Federal prospecting permit, lease or license, an individual shall submit a signed statement showing:

(a) He/she is a U.S. citizen; and

(b) That his/her acreage holdings for the particular mineral concerned do not exceed the acreage holdings allowed for that mineral.

§ 3502.2-3 Associations, including partnerships and trusts.

(a) For an association, such as a partnership, to qualify to hold a prospecting permit, lease or exploration license, or any interest therein, a member or authorized attorney-in-fact shall submit the following:

(1) A signed statement setting forth: (i) The names, addresses, and citizenship of all members owning or controlling 10 percent or more of the association or partnership; (ii) the names of the members authorized to act on behalf of the association or partnership; (iii) that the association or partnership's acreage holdings for the particular mineral concerned do not exceed the acreage holdings for that mineral; and (iv) that the acreage holdings of any member owning more than 10 percent of the association or partnership do not exceed that allowed.

(2) A copy of the articles of the association or partnership.

(b) In order for a trust to hold prospecting permits or leases or any interest therein on behalf of a beneficiary, the guardian or trustee shall submit the following:

(1) A signed statement setting forth: (i) the citizenship of the beneficiary; (ii) the guardian or trustee's own citizenship; (iii) the grantor's citizenship, if the trust is revocable; and (iv) that the acreage holdings of the beneficiary, the guardian or trustee, or the grantor, if the trust is revocable, do not exceed that allowed.

(2) A copy of the court order or other document authorizing or creating the trust or guardianship.

§ 3502.2-4 Corporations.

For a corporation to qualify to hold a prospecting permit, lease, or exploration license, or any interest therein, an officer or authorized attorney-in-fact shall submit a signed statement setting forth:

(a) The State in which the corporation is incorporated;

(b) The names and citizenship of any stockholder owning or controlling more than 10 percent of the stock of the corporation;

(c) The names of the officers authorized to act on behalf of the corporation;

(d) That the corporation's acreage holdings, and those of any stockholder identified under paragraph (b) of this section, do not exceed that allowed; and

(e) The percentage of stock owned, held or controlled by citizens of a foreign country or persons with addresses outside the United States, if greater than 10 percent.

§ 3502.2-5 Heirs and devisees.

(a) If an applicant for a permit, an applicant for a preference right lease or a successful bidder to a competitive lease dies before the permit or lease is issued, the permit or lease shall be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his/her name, provided there is filed in all cases the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms;

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased and are his/her only heirs or devisees; and

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by § 3502.2-2 of this title.

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs and citing the provisions of the law of the deceased's last domicile showing that no probate is required; and

(ii) A statement over the signature of each of the heirs or devisees with reference to citizenship and holdings similar to that required by § 3502.2-2 of this title, except that if the heir or devisee is a minor, the statement shall be over the signature of the guardian or trustee.

(b) If a permittee or lessee dies, the executor or administrator of the estate shall be recognized as the record title holder of the permit or lease if probate has not been completed; and if probate has been completed, or is not required, the heirs or devisees shall be so recognized, provided that in all cases, the evidence required in paragraph (a) of this section has been filed.

§ 3502.2-6 Attorneys-in-fact.

An attorney-in-fact shall submit evidence of his/her authority to act on behalf of the applicant. The applicant shall submit a separate statement as to qualifications and acreage holdings unless the power of attorney specifically authorizes and empowers the attorney-in-fact to make or to execute such statements.

§ 3502.3 Other parties in interest.

If the applicant is not the sole party in interest to a permit or lease, he/she shall submit with his/her application the names of all other parties who hold or will hold any interest in the application or in the permit or lease, when issued. All interested parties shall furnish appropriate evidence of their qualifications to hold such permit or lease interest.

Subpart 3503—Fees, Rentals and Royalties

§ 3503.1 Payments.

§ 3503.1-1 Form of remittance.

All remittances shall be by U.S. currency, postal money order or negotiable instrument payable in U.S. currency and shall be made payable to the Department of the Interior—Bureau of Land Management or the Department of the Interior—Minerals Management Service, as appropriate. In the case of payments made to the Service, such payments may also be made by electronic funds transfer.

§ 3503.1-2 Where remitted.

(a)(1) All filing fees and all first-year rentals and all bonuses for leases issued under Group 3500 of this title shall be paid to the proper BLM office.

(2) All second-year and subsequent rentals and all other payments for leases shall be paid to the Service.

(b) All royalties on producing leases and all payments under leases in their minimum production period shall be paid to the Service.

(c) All payments paid to the Service shall be sent to: Minerals Management Service, Royalty Management Program/BRASS, Box 5640, Denver, Colorado 80217.

§ 3503.2 Production royalties, minimum royalties and overriding royalties.

§ 3503.2-1 Production royalty rates.

Production royalty rates shall be set out in a separate schedule attached to and made a part of all leases and shall be determined on an individual case basis by the authorized officer prior to lease offering. For leases offered competitively, the rates shall be set out in the notice of lease sale. For leases issued noncompetitively, the schedule shall be sent to the prospective lessee for concurrence and signature prior to lease issuance.

§ 3503.2-2 Minimum production and minimum royalty.

(a) Each lease issued on or after the effective date of these regulations shall require a minimum annual production or the payment of minimum royalty in lieu of production for any particular lease year, beginning with the sixth lease year. Minimum royalty payments shall be credited to production royalties for that year only.

(b) Leases renewed or readjusted on or after the effective date of these regulations shall require a minimum annual production or the payment of minimum royalty in lieu of production for any particular lease year, beginning with the first full year of the readjusted or renewed lease. Minimum royalty payments shall be credited to production royalties for that year only.

(c) On or after the effective date of these regulations, the rate of the minimum royalty in lieu of production described in paragraphs (a) and (b) of this section shall be $3 per acre or fraction thereof per year, payable in advance.

(d) Hardrock mineral leases or development or operating agreements which are subject to escalating rentals are exempt from these minimum production and minimum royalty requirements.

§ 3503.2-3 Overriding royalties.

(a) Any overriding royalty interest created by assignment or otherwise shall be subject to the requirement, that if the total of the overriding royalty interest at any time exceeds 1 percent of the gross value of the output at the point at which royalty is assessed, it shall be subject to reduction or suspension by the authorized officer to a total of not less than 1 percent of such gross value, whenever, in the interest of conservation, it appears necessary to do so in order to: (1) prevent premature abandonment; or (2) make possible the economic mining of marginal or low grade deposits. Where there is more than 1 overriding royalty interest, any such suspension or reduction shall be applied to the respective interests in the manner agreed upon by the holders thereof or, in the absence of such agreement, in the inverse order of the dates of creation of such interests.

(b) No overriding royalties shall be paid at a rate in excess of the rate to which they have been so reduced until otherwise authorized by the authorized officer.

§ 3503.2-4 Waiver, suspension, or reduction of rental, minimum royalty or royalties.

(a) In order to encourage the greatest ultimate recovery of the leased minerals, and in the interest of conservation, whenever the authorized officer determines it is necessary to promote development or finds that leases cannot be successfully operated under the terms provided therein, the rental or minimum royalty payments may be waived, suspended or reduced, or the rate of royalty reduced.

(b) An application for any of the above benefits shall be filed in duplicate in the proper BLM office. The application shall contain the serial number of the lease, the name of the record title holder, the operator or sublessee and a description of the lands by legal subdivision in addition to the following information:

(1) Each application shall show the number and location of each mine, a map showing the extent of the mining operations, a tabulated statement of the minerals mined and subject to royalty for each month covering a period of not less than 12 months immediately preceding the date of filing of the application, and the average production per day mined for each month and complete information as to why the minimum production was not attained.

(2) Each application shall contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of any leased products and all facts showing whether the mines can be successfully operated under the royalty or rental fixed in the lease. Where the application is for a reduction in royalty, full information shall be furnished as to whether royalties or payments out of production are paid to anyone other than the United States, the amounts so paid and efforts made to reduce them.

(3) The applicant shall also file agreements of the holders of the lease and of the royalty holders to a permanent reduction of all other royalties from the leasehold to aggregate not in excess of one-half the royalties paid to the United States.

§ 3503.3 Suspensions.

§ 3503.3-1 Suspension of operations and production.

(a) The authorized officer may, in the interest of conservation, order or agree to a suspension of operations and production.

(b) Applications by lessees for suspensions of operations and production shall be filed in duplicate in the proper BLM office and shall set forth why it is in the interest of conservation to suspend operations and production.

(c) The term of any lease shall be extended by adding thereto any period of suspension of operations and production during such term.

(d) A suspension shall take effect as of the date specified by the authorized officer. Rental and minimum annual production shall be suspended during any period of suspension of operations and production beginning with the first day of the lease month on which the suspension of operations and production becomes effective, or, if the suspension of operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. The suspension of rental and minimum annual production shall end on the first day of the lease month in which operations or production is resumed, or upon expiration of the suspension, whichever occurs first. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty due under the lease.

(e) The minimum annual production requirements of a lease shall be proportionately reduced for that portion of a lease year for which a suspension of operations and production is directed or granted by the authorized officer.

§ 3503.3-2 Suspension of operations.

(a) The authorized officer may, upon application of the lessee, suspend operations on a lease issued under the regulations in group 3500 of this title when marketing conditions are such that leases cannot be operated except at a loss.

(b) Application for suspension shall be submitted in duplicate to the proper BLM office and shall contain sufficient information to establish that the lease cannot be operated except at a loss.

(c) A suspension of operations does not affect the term of the lease or the annual rental payment.

(d) A suspension shall take effect as of the date specified by the authorized officer. Minimum annual production shall be suspended during any period of suspension of operations beginning with the first day of the lease month on which the suspension becomes effective, or, if the suspension becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. The suspension of minimum annual production shall end on the first day of the lease month in which operations are resumed, or upon

expiration of the suspension, whichever occurs first.

(e) The minimum annual production requirements of a lease shall be proportionately reduced for that portion of a lease year for which a suspension of operations is granted by the authorized officer.

Subpart 3504—Bonds

§ 3504.1 Bonding requirements.

§ 3504.1-1 When filed.

Prior to the issuance of a permit or lease, the applicant shall be required to submit a surety or personal bond as described in this subpart.

§ 3504.1-2 Where filed.

All bonds shall be filed in the proper BLM office on an approved form. A single copy executed by the principal or, in the case of surety bonds, by both the principal and an acceptable surety is sufficient. Nationwide bonds may be filed in any Bureau State office.

§ 3504.1-3 Surety bonds and personal bonds.

(a) Only those surety bonds issued by qualified surety companies approved by the Department of the Treasury shall be accepted. (See Department of the Treasury Circular No. 570, any supplemental circulars or any replacements).

(b) Personal bonds shall be accompanied by: (1) cash; (2) cashier's check; (3) certified check; or (4) negotiable U.S. Treasury bonds of a value equal to the amount specified in the bond. Negotiable Treasury bonds shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of the lease or permit.

§ 3504.1-4 Individual permit and lease bonds.

Individual permit and lease bond amounts shall be established on a case by case basis by the authorized officer. Minimum bonding requirements are set forth in the pertinent regulations for specific minerals.

§ 3504.1-5 Statewide and nationwide bonds.

(a) In lieu of separate bonds for each lease or permit, a lessee or permittee may furnish a bond in an amount of not less than $25,000, as determined by the authorized officer, to cover all leases and permits for a specific mineral in any 1 State.

(b) In lieu of separate bonds for each lease or permit, a lessee or permittee may furnish a bond in the amount of not less than $75,000, as determined by the authorized officer, to cover all leases and permits for a specific mineral nationwide.

§ 3504.1-6 Change in bond coverage.

The authorized officer may elect to increase or decrease the amount of any bond to be issued or any outstanding bond when a change in coverage is determined appropriate, except no bond may be reduced below the established minimum amount for that mineral.

§ 3504.2 Default.

(a) Where, upon a default, the surety makes a payment to the United States of an obligation incurred under a lease, the face amount of the surety bond or personal bond and the surety's liability thereunder shall be reduced by the amount of such payment.

(b) After default, upon penalty of cancellation of all of the leases or permits covered by such bond, the principal shall within 6 months after notice, or within such shorter period as may be fixed by the authorized officer, either post a new bond or increase the existing bond to the amount previously held. In lieu thereof, the principal may within that time file separate or substitute bonds for each lease or permit.

§ 3504.3 Termination of period of liability.

The authorized officer shall not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed or until all the terms and conditions of the lease or permit have been met.

Subpart 3506—Assignments and Subleases

§ 3506.1 Permits and leases subject to assignment or sublease.

Any prospecting permit or lease may be assigned or subleased in whole or in part to any person, association, or corporation qualified to hold such lease or permit.

§ 3506.2 Filing fees.

To be accepted for filing, each instrument of assignment of record title, operating rights and overriding royalty assignments shall be accompanied by a nonrefundable filing fee of $25. Any instrument not accompanied by the filing fee shall not be accepted.

§ 3506.3 Filing requirements.

§ 3506.3-1 Record title assignments.

(a) A separate instrument of assignment shall be filed in triplicate for each permit or lease. The instrument shall be filed within 90 days of final execution and shall contain:

(1) Name and current address of assignee;

(2) Interest held by assignor and interest to be assigned;

(3) The serial number of the affected permit or lease and a description of the lands to be assigned as described in the permit or lease;

(4) Percentage of overriding royalties retained; and

(5) Date and signature of assignor.

(b) The assignee shall provide a single copy of the request for approval of assignment which shall contain:

(1) Statement of qualifications and holdings as required by subpart 3502 of this title;

(2) Date and signature of assignee; and

(3) Filing fee as required by § 3506.2 of this title;

(c) The approval of an assignment of all interests in a specific portion of the lands in a lease shall create a separate lease which shall be given a current serial number.

§ 3506.3-2 Operating rights.

One copy of a sublease or an operating rights assignment shall be filed within 90 days from the date of final execution and shall contain the operating agreement between the lessee and operator. The operator shall file a request for approval as described in § 3506.3-1(b) of this title. The agreement shall be approved by formal decision.

§ 3506.3-3 Overriding royalty interests.

All overriding royalty interest assignments shall be filed for record purposes within 90 days from the date of execution, but no formal approval shall be given. Any such assignment shall be deemed to be valid provided it is accompanied by the assignee's statement of qualifications as provided for in subpart 3502 of this title, and filing fee as required by § 3506.2 of this title.

§ 3506.4 Permit or lease account status.

The authorized officer shall not approve an assignment of a permit or lease unless the account under the permit or lease is in good standing, or the assignee and his/her surety accepts, in writing, all outstanding liabilities of the assignor which have accrued, whether known or unknown, under the permit or lease.

§ 3506.5 Bonds.

§ 3506.5-1 Coverage.

If the permittee or lessee has been required to maintain a bond, then prior to approval of the assignment, the assignee shall be required to furnish a new bond in the same amount, or, in lieu

thereof, consent of the surety on the present bond to the substitution of the assignee as principal. (See Subpart 3504)

§ 3506.5-2 Continuing responsibility.

The assignor and his/her surety shall continue to be responsible for the performance of any obligation under the permit or lease until the effective date of the approval of the assignment. If the assignment is not approved, the assignor's obligation to the United States shall continue as though no such assignment had been filed for approval. After the effective date of approval the assignee and his/her surety shall be responsible for the performance of all permit or lease obligations notwithstanding any terms in the assignment to the contrary, or after the effective date of approval of the sublease, the sublessor and sublessee shall be jointly and severally liable for the performance of all permit or lease obligations, notwithstanding any terms in the sublease to the contrary.

§ 3506.6 Effective date.

An assignment or sublease shall take effect so far as the United States as lessor is concerned the first day of the month following its final approval by the Bureau, or if the assignee requests, the first day of the month of the approval.

§ 3506.7 Extensions.

The approval of an assignment or sublease shall not extend the life of the permit or the readjustment or renewal periods of the lease.

Subpart 3507—Fractional and Future Interest Permits and Leases

§ 3507.1 Issuance of prospecting permits and leases.

§ 3507.1-1 Prospecting permits.

A prospecting permit for a present fractional interest in mineral deposits acquired by the United States may be issued by the authorized officer.

§ 3507.1-2 Leases.

(a) Noncompetitive leases for future or fractional interests in lands believed, but not known, to contain mineral deposits, may be issued by the authorized officer whenever he/she finds it to be in the public interest.

(b) Noncompetitive leases for any future interest(s) in lands which are a part of an existing mining operation may be issued to the mine owner or operator by the authorized officer whenever he/she finds it to be in the public interest. Such leases shall be conditioned upon payment by the lessee of the fair market value of the mineral deposit at the time of vesting of title to the mineral in the United States.

§ 3507.2 Forms and applications.

No specific application form is required, but the application shall contain the same information required of an applicant for the specific mineral concerned.

§ 3507.3 Terms and conditions.

Permit and lease terms and conditions shall be those provided in this group for the particular mineral.

§ 3507.4 Consent of agency or bureau.

A prospecting permit for a present fractional interest in mineral deposits, or a lease for a fractional or future interest in mineral deposits acquired by the United States, may be issued by the authorized officer only with the consent of the surface management agency.

§ 3507.5 Where filed and filing fee.

The application shall be filed in triplicate in the proper BLM office and shall be accompanied by a nonrefundable filing fee of $25.

§ 3507.6 Qualifications.

Compliance with Subpart 3502 of this title is required.

§ 3507.7 Evidence of ownership.

§ 3507.7-1 Present fractional interest.

An applicant for a present fractional interest permit or lease shall have a present interest in the minerals. If the applicant does not own all of the mineral interests not owned by the United States or all of the operating rights therein, the application shall show the extent of the applicant's rights and the names of the other owners of such rights.

§ 3507.7-2 Future interest.

An application for a whole or fractional future interest prospecting permit or lease shall include evidence of title to the present interest in the mineral deposit, which may be in the form of a certified abstract of title or certificate of title. If the applicant is the owner of the operating rights to the non-federal minerals and acquired such rights under a lease or contract with the owner of such minerals, the application shall be accompanied by 3 copies of such lease or contract. A whole or fractional future interest lease shall be issued only to an applicant who owns all or substantially all of the present operating rights to the non-federal minerals as fee owner, lessee or operator holding such rights.

§ 3507.8 Effective date of future interest leases.

Future interest leases shall become effective on the date of vesting of title to the minerals in the United States as stated in the lease.

§ 3507.9 Rejection of application.

(a) An application for a future interest lease filed less than 1 year prior to the date of the vesting in the United States of the present interest in the minerals shall be rejected. Upon the vesting in the United States of the present possessory interest in the minerals, all applications for future interest leases outstanding at the time shall automatically lapse and thereafter only applications for a present interest lease shall be considered.

(b) Unless the authorized officer determines it to be in the public interest to do otherwise, a lease or prospecting permit shall not issue to one who, with the Federal interest applied for, would control less than 50 percent of the operating rights, and the application for such a lease or permit shall be rejected.

Subpart 3508—Mineral Lease Exchange

§ 3508.0-1 Purpose.

This subpart authorizes a mineral prospecting permittee, or mineral lessee, to relinquish the lease to be acquired under preference right, or an existing mineral lease, in exchange for a mineral lease of other lands of comparable value for any leasable or hardrock mineral when the Secretary concludes that operations on the preference right or outstanding lease would not be in the public interest, and that operations on the lands leased in exchange would be in the public interest.

§ 3508.0-7 Scope.

(a) The regulations in this subpart and Subpart 3435 of this title, which cover provisions related to exchanges involving the issuance of coal leases, coal lease bidding rights or coal lease modifications, may be used in exchanges of one mineral for another.

(b) In the case of a conflict between this subpart and the provisions of Subpart 3435 of this title, the provisions governing the lease or lease interest to be issued shall control.

§ 3508.1 When exchange provisions apply.

(a) The provisions of this subpart shall be invoked by the authorized officer notifying the preference right lease applicant or lessee that he/she is prepared to consider exchange of a mineral lease for relinquishment of

leasing rights on the lands described in the notice.

(b) The authorized officer may seek the exchange of any part or all of the lands under preference right lease application or lease. More than 1 preference right lease application or lease may be considered. The effect of a partial or multiple exchange shall be taken into account by the authorized officer in determining whether such an exchange is in the public interest.

(c) An exchange mineral lease shall not be issued unless the authorized officer finds, after completing the procedures in this subpart, that the exchange is in the public interest.

(d) For the purposes of this subpart, an exchange shall be considered in the public interest if the authorized officer finds that the benefits of production from the lease or preference right lease would not outweigh the adverse effects, or threat of damage or destruction to agricultural production potential, or scenic, biological, geologic, historic or other public interest values from lease operations, and if the authorized officer finds the lands proposed for exchange free from hazardous waste as defined under the authorities of the Clean Water Act, Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation and Liability Act. In exercising his/her discretion to exchange mineral leasing values in the public interest, the authorized officer shall consider, but is not limited to consideration of, these elements of the public interest; recreational use; archeological or historic values; threatened or endangered species; proximity of residential or urban areas; study for potential inclusion in the wilderness or wild and scenic rivers systems; and value for public uses, including public highways, airports and rights-of-way.

§ 3508.2 Exchange procedures.

(a) The authorized officer shall notify the preference right lease applicant or lessee when he/she is prepared to consider an exchange or other mineral leasing values for a tract under lease application or lease. The exchange notice shall:

(1) State why the authorized officer believes an exchange would be in the public interest;

(2) Provide that the lease applicant or lessee shall respond by indicating whether he/she is willing to negotiate for an exchange under this subpart; and

(3) Contain a description of the lands for which the authorized officer would offer exchange terms. The preference right lease applicant's or lessee's reply may describe the lands on which the lease applicant or lessee would accept an exchange lease.

(b) A preference right lease applicant shall show the timely submittal of a mineral preference right lease application.

(c) If the preference right lease applicant demonstrates to the Secretary that the applicant has a preference right to a lease, the authorized officer may, in lieu of issuing a lease on the preference right, negotiate for the selection of appropriate exchange lands and establish lease terms on the lands to be leased in exchange.

(d)(1) The lands leased in exchange shall, to the satisfaction of the preference right lease applicant or lessee and the authorized officer, be a lease tract containing a deposit of leasable or hardrock minerals of comparable value. A lease tract shall be determined "of comparable value" for exchange purposes when the authorized officer concludes that the value of the more valuable tract is less than 10 percent greater than the value of the less valuable tract.

(2) The lands covered by an exchange lease shall be subject to leasing under the authorities contained in § 3500.0–3 of this title.

(e) The exchange right shall be equal to the fair market value of the preference right or lease to be relinquished. A reply to the authorized officer's notice by the preference right lease applicant or lessee which indicates a willingness to consider an exchange also shall indicate a willingness to provide geologic and economic data to enable the authorized officer to determine the fair market value of the relinquished preference right or lease.

(f) After the prospective exchange lessee and the authorized officer agree on the lands to be leased in exchange, a notice of the proposed exchange shall be published in the **Federal Register** and in a newspaper(s) in the county(s) where both the preference right or lease lands and the proposed exchange lease lands are located. The notice shall include:

(1) The time and place of a public hearing(s);

(2) The authorized officer's preliminary findings that the exchange is in the public interest; and

(3) A request for public comments on the merits of the proposed exchange.

§ 3508.3 Issuance of lease.

(a) If, after public hearing, the authorized officer determines by written decision that issuance of the exchange lease is in the public interest, he/she shall establish stipulations for operations on the exchange lease.

(b) The exchange lease shall be subject to the relevant provisions of group 3500 and standard lease terms thereunder and shall contain:

(1) A statement that the lessee quitclaims and relinquishes any right or interest in the preference right lease application or lease exchanged; and

(2) A statement setting forth the authorized officer's finding that the lease issuance is in the public interest.

Subpart 3509—Relinquishment, Termination, Expiration, and Cancellation

§ 3509.1 Relinquishment.

§ 3509.1–1 Prospecting permits.

The permittee may relinquish the entire prospecting permit or any legal subdivision thereof. A partial relinquishment shall clearly describe the lands surrendered and give the exact acreage relinquished. A relinquishment shall be filed in the proper BLM office. Upon its acceptance by the authorized officer, the relinquishment shall be effective as of the date it is filed. Such lands, if otherwise available, shall be subject to the filing of new applications immediately upon notation of the relinquishment on the official status records.

§ 3509.1–2 Leases.

Upon a satisfactory showing that the public interest will not be impaired, the lessee may relinquish the entire lease or any legal subdivision thereof. A partial relinquishment shall clearly describe the lands surrendered and the exact area thereof. A relinquishment shall be filed in the proper BLM office. Upon its acceptance by the authorized officer, the relinquishment shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his/her surety to make payment of all accrued rentals and royalties and to provide for the preservation of any mines or productive works or permanent improvements on the leased lands in accordance with the regulations and terms of the lease.

§ 3509.2 Termination of prospecting permits.

A prospecting permit shall automatically terminate for failure to pay rental on or before the anniversary date of the permit. The termination of the permit for failure to pay rental shall be noted on the official status records of the proper BLM office. Until such notation is made, the lands covered by the permit shall not be available for filing of any new permit applications.

Applications for such permits filed prior to such notation shall be rejected.

§ 3509.3 Expiration.

§ 3509.3-1 Prospecting permits.

The permit shall expire at the end of its initial or extended term, as applicable, without notice to the permittee. However, a permit may be extended if the permittee timely files an application for extension (See §§ 3512.9-2, 3532.9-2, 3552.9-2 and 3562.9-2). Upon expiration, the lands, if otherwise available and if no preference right lease application has been filed by the prior permit holder, shall be subject to filing of new applications for prospecting permits 60 days thereafter.

§ 3509.3-2 Leases.

(a) Hardrock, sodium, sulphur and asphalt leases shall expire either at the end of the lease term, if a timely application for lease renewal is not timely filed in accordance with applicable regulations, or at the time a timely application for renewal is rejected.

(b) Potassium, phosphate and gilsonite leases continue for so long as the lessee complies with the lease terms and conditions which are subject to periodic readjustment in accordance with applicable regulations.

§ 3509.4 Cancellation.

§ 3509.4-1 Prospecting permits.

(a) Except as provided for in § 3509.2 of this title, if a permittee fails to comply with the provisions of the law or the regulations issued thereunder, or defaults with respect to any of the terms or stipulations of the permit and such failure or default continues for 30 days after service of written notice thereof by the authorized officer, the permit may be cancelled. A waiver of any particular cause for cancellation shall not prevent the cancellation of the permit for any other cause, or for the same cause occurring at any other time.

(b) The cancellation of a permit for cause shall be noted on the official status records of the proper BLM office. Until such notation is made, the lands covered by the permit shall not be available for filing of like applications for a permit. Applications for such permits filed prior to such notation shall be rejected.

§ 3509.4-2 Leases.

(a) If the lessee fails to comply with the provisions of the Act, or of the general regulations promulgated and in force on the date of the lease, or at the effective date of any readjustment of the terms and conditions thereof, or defaults in the performance or observance of any of the terms, covenants, and stipulations of the lease and such failure or default continues for 30 days after service of written notice thereof by the lessor, then the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of the lease as provided in section 31 of the Act. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause of forfeiture, or for the same cause occurring at any other time.

(b) If any interest in any lease is owned or controlled directly or indirectly in violation of any of the provisions of the Act, the authorized officer shall give the lessee 30 days to remedy the violation or to show cause why the Attorney General should not be requested to institute proceedings in a court of competent jurisdiction to:

(1) Cancel the lease;

(2) Forfeit the interest so owned; or

(3) Compel disposal of the interest so owned or controlled.

(c) If a lease is issued improperly, it shall be subject to administrative cancellation.

§ 3509.4-3 Bona fide purchasers.

(a) A lease or interest therein shall not be cancelled to the extent that such action adversely affects the title or interest of a bona fide purchaser even though such lease or interest, when held by a predecessor in title, may have been subject to cancellation. All purchasers shall be charged with constructive notice as to all pertinent regulations and all Bureau records pertaining to the lease and the lands covered by the lease.

(b) Prompt action shall be taken to dismiss, as a party to any proceedings with respect to a violation by a predecessor of any provisions of the Act, any person who shows the holding of an interest as a bona fide purchaser without having violated any provisions of the Act. No hearing shall be necessary upon such showing unless prima facie evidence is presented that the purchaser is not a bona fide purchaser. If, during any such proceeding, a party thereto files a waiver of his/her rights under the lease to drill or to assign his/her lease interests, or if such rights are suspended by order of the Secretary pending a decision, payments or rentals and the running of time against the term of the lease involved shall be suspended as of the first day of the month following the filing of the waiver or of the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver for suspension.

PART 3510—PHOSPHATE

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Subpart 3510—Phosphate Leasing—General

§ 3510.0–3 Authority.

Authority for leasing phosphate is shown under § 3500.0–3 (a) and (c) of this title.

§ 3510.1 Leasing procedures.

The regulations in this part provide the procedures for qualified applicants to obtain rights to develop deposits of phosphate, including associated and related minerals, found on lands available for leasing. The regulations provide for this in the following manner:

(a) "Prospecting permits" allow the permittee to explore for deposits of phosphate.

(b) "Preference right leases" are issued to holders of prospecting permits who demonstrate the discovery of a valuable deposit of phosphate under the permit.

(c) "Exploration licenses" allow the licensee to explore known deposits of phosphate to obtain data but do not grant the licensee any preference or other right to a lease.

(d) "Competitive leases" are issued for known deposits of phosphate and allow the lessee to mine the deposit.

(e) "Fringe acreage leases" are issued noncompetitively for known deposits of phosphate on Federal lands adjacent to existing mines on non-Federal lands which can only be mined as part of the existing mining operation.

(f) "Lease modifications" are used to add known deposits of phosphate to an adjacent Federal lease which contains an existing mine provided the deposits can only be mined as part of the existing mining operation.

§ 3510.2 Other applicable regulations.

§ 3510.2–1 General leasing regulations.

Part 3500 of this title contains the general regulations governing the leasing of solid minerals other than coal and oil shale and supplements, as applicable, the regulations in this part. The Part 3500 regulations include, but are not limited to, such matters as multiple mineral development, environmental review, other agency consent and consultation, and lands not available for leasing. Cross-reference to specific regulations in part 3500 is provided in this part as an aid to the reader and is not intended to limit the applicability of Part 3500 of this title only to the cross-referenced regulations.

§ 3510.2–2 Special areas.

Part 3580 of this title contains regulations specific to certain national recreation areas and to certain lands patented to the State of California, and as applicable, supplements this part. Except where specific regulations in Part 3580 of this title are applicable, the regulations in this part and Part 3500 of this title shall govern the leasing of phosphate in those national recreation areas and those patented lands.

§ 3510.3 Allowable acreage holdings.

No person, company, association or corporation may hold at any particular time, directly or indirectly, more than 20,480 acres under prospecting permit and lease in the United States.

Subpart 3511—Lease Terms and Conditions

§ 3511.1 Applicability of lease terms and conditions.

The lease terms and conditions set out under this section apply to all leases issued or readjusted under Part 3510 of this title. Each lease shall be issued on a form approved by the Director and shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved. Each lease shall authorize in accordance with its terms and conditions the mining of phosphate, phosphate rock and associated or related minerals.

§ 3511.2 Rental and royalty.

§ 3511.2–1 Rental.

(a) Each lease shall provide for the payment of rental annually on or before the anniversary date of the lease. The rental for each acre or fraction thereof shall be at the rate of not less than 25 cents for the first lease year, 50 cents for the second and third lease years, and $1 for each and every year thereafter. The annual rental payment shall not be less than $20. The rental paid for any year shall be credited against the first royalties as they accrue under the lease during the year for which rental was paid.

(b) If the annual rental is not timely remitted, the lessee shall be notified by the authorized officer that, unless payment is made within 30 days from receipt of such notification, action shall be taken to cancel the lease. (See § 3509.4–2)

(c) Remittances of rental shall be made in accordance with § 3503.1 of this title.

§ 3511.2–2 Production royalty.

All leases shall be conditioned upon the payment to the United States of such royalties as may be specified in the lease, which shall be fixed by the authorized officer in advance as provided under § 3503.2–1 of this title but not less than 5 per centum of the gross value of the output of phosphates or phosphate rock and associated or related minerals.

§ 3511.3 Duration of lease.

The lease shall be issued for an indeterminate period subject to the Secretary's right of reasonable readjustment of lease terms and conditions at the end of each 20-year period.

§ 3511.4 Readjustment.

(a) The terms and conditions of a lease are subject to reasonable readjustment at the end of each 20-year period following the effective date of the lease unless otherwise provided by law at the time of expiration of such period. Prior to the expiration of each 20-year period, the authorized officer shall transmit proposed readjusted terms and

conditions to the lessee. If the authorized officer fails to transmit the proposed readjusted terms and conditions prior to the expiration of the 20-year period, the right to readjust the lease shall have been waived until the expiration of the next 20-year term.

(b) The lessee is deemed to have agreed to the readjusted terms and conditions unless within 60 days after receiving them, the lessee files an objection to the readjusted terms and conditions or relinquishes the lease. The authorized officer shall issue a decision responding to the objections, and if the response is adverse to the lessee, the decision shall grant the right of appeal under part 4 of this title. The effective date of the readjustment shall not be affected by the filing of objections or the filing of a notice of appeal.

(c) Except as provided in this paragraph, the readjusted terms and conditions shall be effective pending a response to the objections or the outcome of the appeal provided for in paragraph (b) of this section unless the authorized officer provides otherwise. Upon the filing of an objection or appeal, the obligation to pay any increased readjusted royalties, minimum royalties and rentals shall be suspended pending the outcome of the objection or appeal. However, any such increased royalties, minimum royalties and rentals shall accrue during the pendency of the objection or appeal, commencing with the effective date of the readjustment. If the increased royalties, minimum royalties and rentals are sustained by the decision on the objection or on appeal, the accrued balance, plus interests at the rate specified for late payment by the Service shall be payable (See Part 3590). Pending the decision on the objection or the appeal, the royalties, minimum royalties and rentals shall be payable as specified by the lease terms and conditions in effect prior to the end of the 20-year period.

§ 3511.5 Use of other minerals.

Any phosphate lease issued pursuant to this subpart shall provide that the lessee may use deposits of silica, limestone or other rock on the leased lands in the processing or refining of the phosphates, phosphate rock and associated or related minerals mined from the leased lands upon payment of royalty as set forth in the royalty schedule attached to the lease.

§ 3511.6 Bonds.

Prior to issuance of a lease, the applicant shall furnish a bond in an amount to be determined by the authorized officer, but not less than $5,000. (See Subpart 3504)

§ 3511.7 Special stipulations.

To insure adequate utilization and protection of the lands and their resources, leases shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title. (See also Part 3580)

§ 3511.8 Other applicable regulations.

Leases issued under this part shall also be subject to the conditions set forth in other regulations, including, but not limited to, the following:

(a) Minimum annual production and minimum royalty are covered by § 3503.2–2 of this title.

(b) Suspension of operations and production and suspension of operations are covered by § 3503.3 of this title.

(c) Assignments and subleases are covered by subpart 3506 of this title.

(d) Cancellation and relinquishment are covered by subpart 3509 of this title.

(e) Exploration and mining are covered by Part 3590 of this title.

(f) Royalty management is covered by 30 CFR Chapter II, Subchapter A.

Subpart 3512—Phosphate Prospecting Permits

§ 3512.1 Areas subject to prospecting.

A prospecting permit may be issued for any unclaimed, undeveloped area of available public domain or acquired lands subject to leasing where prospecting or exploratory work is necessary to determine the existence or workability of deposits of phosphate. Discovery of a valuable deposit of phosphate within the term of the permit entitles the permittee to a preference right lease.

§ 3512.2 Rights conferred by issuance of prospecting permits.

A permit shall grant the permittee the exclusive right to prospect on and explore the lands to determine the existence of a valuable deposit of phosphate in accordance with the terms and conditions of the permit. The permittee may remove only such material as is necessary to demonstrate the existence of a valuable mineral deposit.

§ 3512.3 Application for prospecting permit.

§ 3512.3–1 Filing requirements.

(a) An application shall be filed on a form approved by the Director or an exact reproduction of such form.

(b) An application shall be filed in triplicate with the proper BLM office.

(c) The application shall be accompanied by a nonrefundable filing fee of $25, and rental for the first year at the rate of 50 cents per acre, or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest subdivision. The rental payment shall not be less than $20.

§ 3512.3–2 Contents of applications.

Each application shall be typewritten, or printed plainly in ink; manually signed in ink and dated by the applicant or applicant's duly authorized attorney-in-fact, and shall contain the following:

(a) The name and address of the applicant;

(b) A statement of the applicant's qualifications and holdings. (See Subpart 3502); and

(c) A complete and accurate land description in compliance with subpart 3501 of this title. The application shall not include more than 2,560 acres in a reasonably compact form.

§ 3512.3–3 Exploration plans.

After an initial review and clearance of the application indicates that the application is in compliance with the requirements of this subpart, the authorized officer shall require the applicant to file an exploration plan in triplicate, reasonably designed to determine the existence or workability of the deposit. The exploration plan shall, insofar as possible, including the following:

(a) The names, addresses and telephone numbers of persons responsible for operations under the plan and to whom notices and orders are to be delivered;

(b) A brief description, including maps, of geologic, water, vegetation and other physical factors, and the distribution, abundance and habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed operation within the area where exploration is to be conducted, and the present land use within and adjacent to the area;

(c) A narrative description showing:

(1) The method of exploration and types of equipment to be used;

(2) The measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or their habitat and other natural resources and hazards to public health and safety, including specific

actions necessary to meet all applicable laws and regulations;

(3) The method for plugging drill holes; and

(4) The measures to be taken for surface reclamation, which shall include as appropriate:

(i) A reclamation schedule;

(ii) The method of grading, backfilling, soil stabilization, compacting and contouring;

(iii) The method of soil preparation and fertilizer application;

(iv) The type and mixture of shrubs, trees, grasses, forbs or other vegetation to be planted; and

(v) The method of planting, including approximate quantity and spacing.

(d) The estimated timetable for each phase of the work and for final completion of the program;

(e) Suitable topographic maps or aerial photographs showing existing bodies of surface water, topographic, cultural and drainage features, and the proposed location of drill holes, trenches and roads; and

(f) Such other data as may be required by the authorized officer.

§ 3512.3-4 Rejection of application.

Any application for a prospecting permit which does not comply with the requirements of this subpart shall be rejected. If the applicant files a new application for the same lands within 30 days of receipt of the rejection, the nonrefundable filing fee and rental payment submitted with the original application shall be applied to the new application, provided the serial number of the original application is shown on the new application. If a new application is not filed within the 30-day period, the advance rental shall be refunded. Priority for the permit shall be established as of the date the corrected application is filed.

§ 3512.4 Determination of priorities.

§ 3512.4-1 Regular filings.

Priority of application shall be determined in accordance with the time of filing.

§ 3512.4-2 Simultaneous filings.

Where more than 1 application is filed at the same time for the same lands, priority shall be determined in accordance with Subpart 1821.2-3 of this title.

§ 3512.5 Amendment to application.

An amendment to an application for a prospecting permit to include additional lands shall receive priority for such additional lands from the date of the filing of the amended application. The amended application shall be accompanied by the required advance rental. No additional filing fees are required.

§ 3512.6 Withdrawal of application.

An application for permit may be withdrawn in whole or in part before the permit is signed on behalf of the United States. Upon acceptance of the withdrawal, the advance rental submitted with the application shall be refunded.

§ 3512.7 Permit bonds.

Prior to issuance of the permit, the applicant shall furnish a bond in an amount determined by the authorized officer, but not less than $1,000. (See Subpart 3504)

§ 3512.8 Terms and conditions of permit.

§ 3512.8-1 Duration of permit.

Prospecting permits are issued for an initial term of 2 years, and may be extended for an additional period not to exceed 4 years as provided in § 3512.9 of this title. No exploration activities other than those approved as part of an existing exploration plan shall be conducted following expiration of the initial term unless and until the permit has been extended by the authorized officer.

§ 3512.8-2 Dating of permits.

The permit shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved.

§ 3512.8-3 Annual rental.

Rental at the rate of 50 cents per acre or fraction thereof shall be paid annually on or before the anniversary date of the permit. The rental payment shall not be less than $20.

§ 3512.8-4 Special stipulations.

To insure adequate protection of the lands and their resources, permits shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title. (See Part 3580)

§ 3512.9 Prospecting permit extensions.

§ 3512.9-1 Conditions for, and duration of, extensions.

A permit may be extended for a maximum of 4 years at the discretion of the authorized officer provided that:

(a) The permittee has been unable, with reasonable diligence, to determine the existence or workability of valuable deposits covered by the permit and desires to continue the prospecting or exploration program. Reasonable diligence means that, in the opinion of the authorized officer, the permittee has drilled a sufficient number of core holes on the permit area or performed other comparable prospecting to explore the permit area within the time allowed; or

(b) The permittee's failure to perform diligent prospecting activities was due to conditions beyond his/her control.

§ 3512.9-2 Application for extension.

(a) Filing requirements.

(1) No specific application form is required.

(2) Application for extension shall be filed in the proper BLM office at least 90 days prior to expiration of the permit.

(3) Applications for extension shall be accompanied by a nonrefundable filing fee of $25, and advance rental of 50 cents per acre, or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20.

(b) The application for extension shall:

(1) Demonstrate that the permittee has met the conditions for extension set out in § 3512.9-1 of this title;

(2) Demonstrate the permittee's diligent prospecting activities; and

(3) Show how much additional time is necessary to complete prospecting work.

§ 3512.9-3 Effective date.

The permit extension shall become effective as of the date of approval.

Subpart 3513—Preference Right Lease

§ 3513.1 Application for preference right lease.

§ 3513.1-1 Filing requirements.

(a) No specific application form is required.

(b) An application shall be filed in triplicate with the proper BLM office no later than 60 days after the prospecting permit expires.

(c) The application shall be accompanied by the first year's rental at the rate of 25 cents per acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20. (See subpart 3503)

§ 3513.1-2 Contents of application.

(a) The application shall contain a statement of qualification and holdings in compliance with Subpart 3502 of this title.

(b) The application shall contain a complete and accurate description of the lands in accordance with § 3501.1 of this

title. The lands shall have been included in the prospecting permit and shall not exceed 2,560 acres.

(c) The application shall be accompanied by a map(s) which shows utility systems, the location of any proposed development or mining operations and facilities incidental thereto, including the approximate locations and the extent of the areas to be used for pits, overburden and tailings, and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto.

(d) The application shall include a narrative statement setting forth:

(1) The anticipated scope, method and schedule of development operations, including the types of equipment to be used;

(2) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed; and

(3) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facilities incidental thereto, on adjacent Federal or non-Federal lands.

§ 3513.2 Review of application.

§ 3513.2-1 Preference right determination.

The authorized officer shall determine whether the permittee has discovered a valuable deposit of phosphate. The determination shall be based on the data furnished to the authorized officer by the permittee as required by Part 3590 of this title during the life of the permit and supplemental data submitted at the request of the authorized officer to determine the extent and character of the deposit, the anticipated mining and processing methods, the anticipated location, kind and extent of necessary surface disturbance and measures to be taken to reclaim that disturbance.

§ 3513.2-2 Surface management agency.

The surface management agency, if other than the Bureau, shall review the application for preference right lease in accordance with § 3500.9 and Part 3580 of this title, as applicable. The appropriate surface management agency may request supplemental data regarding surface disturbance and reclamation if not otherwise submitted under § 3513.1-2 of this title.

§ 3513.3 Issuance of lease.

The authorized officer shall issue a lease to the holder of a prospecting permit who shows that, within the term of the permit, a valuable deposit of phosphate was discovered.

§ 3513.4 Rejection of application.

(a) The authorized officer shall reject an application for a preference right lease if the authorized officer determines:

(1) That the applicant did not discover a valuable deposit of phosphate;

(2) The applicant did not submit in a timely manner requested information; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) On alleging in an application facts sufficient to show entitlement to a lease, an applicant shall have a right to a hearing before an Administrative Law Judge in the Office of Hearings and Appeals.

(c) At the hearing, the lease applicant shall have both the burden of going forward and the burden of proof by a preponderance of the evidence that a valuable deposit of phosphate was discovered.

Subpart 3514—Exploration License

§ 3514.0-3 Authority.

Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)).

§ 3514.1 Exploration license.

Private parties, jointly or severally, may apply for exploration licenses to explore known, unleased phosphate deposits to obtain geologic, environmental and other pertinent data concerning such deposits.

§ 3514.2 Regulations applicable.

Except as otherwise specifically provided in this subpart, the regulations pertaining to land use authorizations under Part 2920 of this title shall govern the issuance of exploration licenses.

§ 3514.3 Exploration plan.

All applications for exploration licenses shall include an exploration plan which is in full compliance with § 3512.3-3 of this title. The exploration plan, as approved, shall be attached to, and made a part of, the license.

§ 3514.4 Notice of exploration.

Applicants for exploration licenses shall be required to publish a Notice of Exploration inviting other parties to participate in exploration under the license on a pro rata cost sharing basis.

§ 3514.4-1 Contents of notice.

The Notice of Exploration prepared by the authorized officer and furnished to the applicant shall contain:

(a) The name and address of the applicant;

(b) A description of the lands;

(c) The address of the Bureau office where the exploration plan shall be available for inspection; and

(d) An invitation to the public to participate in the exploration under the license.

§ 3514.4-2 Publication and posting of notice.

(a) The applicant shall publish the Notice of Exploration once a week for 3 consecutive weeks in at least 1 newspaper of general circulation in the area where the lands are located.

(b) The authorized officer shall post the notice in the proper BLM office for 30 days.

§ 3514.4-3 Notice of participation.

Any person who seeks to participate in the exploration program shall notify the authorized officer and the applicant in writing within 30 days after posting.

§ 3514.4-4 Decision on plan and participation.

The authorized officer may issue the license naming participants and acreage covered, establishing core hole spacing and resolving any other issue necessary to minimize surface disturbance and inconsistencies between proposed exploration plans.

§ 3514.5 Submission of data.

The licensee shall furnish the authorized officer copies of all data obtained during exploration. All data shall be considered confidential and not made public until the areas involved have been leased or until the authorized officer determines that the data are not exempt from disclosure under the Freedom of Information Act, whichever occurs first.

§ 3514.6 Modification of exploration plan.

Upon application therefor, a modification of the exploration plan may be approved by the authorized officer.

Subpart 3515—Competitive Leasing

§ 3515.1 Lands subject only to competitive leasing.

Lands available for leasing where prospecting or exploratory work is unnecessary to determine the existence or workability of a valuable phosphate deposit may be leased only through competitive sale to the qualified bidder who offers the highest acceptable bonus bid, except as provided in Subparts 3508 and 3516 of this title. A competitive lease sale may be initiated either through an expression of interest or on Bureau motion.

§ 3515.2 Surface managment agency.

Prior to competitive lease offering, the surface management agency shall be consulted in accordance with § 3500.9 and Part 3580 of this title, as applicable.

3515.3 Sale procedures.

§ 3515.3-1 Publication and posting of notice.

Prior to a lease offering, the authorized officer shall publish a notice of lease sale for at least 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated. The notice of lease sale shall be posted for 30 days in the public room of the proper BLM office.

§ 3515.3-2 Contents of notice.

The lease sale notice shall include:

(a) The time and place of sale;

(b) The bidding method;

(c) A description of the tract being offered;

(d) A description of the phosphate deposit being offered;

(e) The minimum bid to be considered; and

(f) Information on where a detailed statement of the terms and conditions of the lease sale and of the proposed lease may be obtained.

§ 3515.3-3 Detailed statement.

The authorized officer shall also prepare and make available a detailed statement of sale containing:

(a) The proposed lease on a form approved by the Director with terms and conditions, including the rental, royalty rates, bond amount, and special stipulations for the particular tract;

(b) An explanation of the manner in which bids may be submitted;

(c) A notice that each bid shall be accompanied by the bidder's qualifications (See Part 3502) and one-fifth of the amount bid;

(d) A notice that the successful bidder(s) shall be required, prior to lease issuance, to pay their proportionate share of the total cost of the publication of the sale notice;

(e) A warning to all bidders concerning 18 U.S.C. 1860 which prohibits unlawful combination or intimidation of bidders;

(f) A statement that the Secretary reserves the right to reject any and all bids, and the right to offer the lease to the next qualified bidder if the successful bidder fails to obtain the lease for any reason; and,

(g) Any other information deemed appropriate.

§ 3515.4 Bid opening.

All bids shall be opened and announced at the time and date specified in the notice of lease sale, but no bids shall be accepted or rejected at that time. Bids received after the time specified in the notice of sale shall not be considered. A bid may be withdrawn or modified prior to the time specified in the notice of sale.

§ 3515.5 Award of lease.

After the authorized officer has determined that the highest qualified bid meets or exceeds fair market value, copies of the lease on the form attached to the detailed statement shall be sent to the successful bidder who shall, within a specified time, sign and return the lease form, pay the balance of the bonus bid, pay the first year's rental, pay the publication costs and furnish the required lease bond.

§ 3515.6 Rejection of bid.

(a) If the high bid is rejected for failure of the successful bidder to sign the lease form and pay the balance of the bonus bid, or otherwise comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited to the United States.

(b) If the lease cannot be awarded for reasons determined by the authorized officer to be beyond the control of the successful bidder, the authorized officer shall reject the bid and the deposit submitted with the bid shall be returned.

Subpart 3516—Noncompetitive Leasing—Fringe Acreage Leases and Lease Modifications

§ 3516.1 Lands subject to lease.

Lands available for leasing which are known to contain a phosphate deposit that extends from an adjoining Federal lease or from privately held lands may be leased noncompetitively either by a issuance of a new lease for these lands or by adding such lands to an existing Federal lease.

§ 3516.2 Special requirements.

Before a fringe acreage lease may be issued or a lease modified under this subpart, the authorized officer shall determine the following:

(a) The lands are contiguous to an existing Federal lease or to non-Federal lands owned or controlled by the applicant;

(b)(1) The new lease for the fringe acreage is not in excess of 2,560 acres; or

(2) The acreage of the modified lease, including additional lands, is not in excess of 2,560 acres;

(c) The mineral deposit is not in an area of competitive interest to holders of other active phosphate mining units in the area;

(d) The lands applied for lack sufficient reserves of the mineral resource to warrant independent development; and

(e) Leasing the lands will result in conservation of natural resources and will provide for economical and efficient recovery as part of a mining unit.

§ 3516.3 Filing requirements.

(a) An application shall be filed in triplicate with the proper BLM office. No specific application form is required.

(b) The application shall be accompanied by a nonrefundable filing fee of $25, and an advance rental payment of 25 cents per acre or fraction thereof for a new lease or at the rental rate set forth in the base lease for a modification made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20.

(c) The application shall:

(1) Make reference to the serial number of the lease if the lands adjoin an existing Federal lease;

(2) Contain a complete and accurate description of the lands desired;

(3) Include a showing that a phosphate deposit extends from the applicant's adjoining lease or from private lands owned or controlled by the applicant; and

(4) Include proof of ownership or control of the mineral deposit in the adjoining lands if not under a Federal lease.

§ 3516.4 Surface management agency.

The surface management agency, if other than the Bureau, shall be consulted in accordance with § 3500.9 and Part 3580 of this title, as applicable.

§ 3516.5 Payment of bonus.

Prior to the issuance of a new lease or a modification of an existing lease, the applicant shall be required to pay a bonus in an amount determined by the authorized officer based on an appraisal. In no event, shall such payment be less than $1 per acre or fraction thereof.

§ 3516.6 Terms and conditions of lease.

New leases shall be issued subject to the terms and conditions set out under Subpart 3511 of this title. The terms and conditions of modified leases shall be the same as in the existing leases.

Subpart 3517—Use Permits

§ 3517.1 Use permits.

A lessee or permittee may be granted a right to use the surface of unappropriated and unentered public lands, not exceeding 80 acres, not

included within the boundaries of a national forest if necessary for the proper extraction, treatment or removal of the mineral deposits. This provision is not applicable to National Forest System lands

§ 3517.1-1 Applications.

Applications for permits to use additional lands shall be filed in triplicate in the proper BLM office. Each application shall be accompanied by a nonrefundable $25 filing fee and the first year's rental. The rental payment shall not be less than $20.

§ 3517.1-2 Rental.

(a) The annual rental charge for use of such lands shall not be less than $1 an acre or fraction thereof. Payment of the rental shall be made on or before the anniversary date of the permit and also shall be required on all use permits issued prior to the effective date of this section.

(b) Any use permit shall terminate if the permittee or lessee fails to pay the rental within 30 days after service of written notice thereof by the authorized officer.

§ 3517.1-3 Additional requirements.

Applications shall set forth the specific reasons why the permittee or lessee needs any additional lands for the use named, describe the lands desired in accordance with Subpart 3501 of this title and also set forth the reasons why the lands are desirable and adapted to the use named, either in point of location, topography or otherwise, and shall assure that they are unoccupied and unappropriated. The application shall also contain an agreement to pay the annual charge prescribed in the permit.

§ 3517.2 Approval.

A use permit shall be issued on a form approved by the Director and dated as of the first day of the month after its issuance unless the applicant requests, in writing, that it be dated the first day of the month of issuance.

PART 3520—SODIUM

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Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.); the Mineral Leasing Act of Acquired Lands of 1947 (30 U.S.C. 351-359); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); the Act of March 3, 1933, as amended (47 Stat. 1487); Section 10 of the Act of August 4, 1939 (43 U.S.C. 387); the Act of October 8, 1964 (16 U.S.C. 460n et seq.); the Act of November 8, 1965 (16 U.S.C. 460q et seq.); the Act of October 2, 1968 (16 U.S.C. 90c et seq.); the Act of October 27, 1972 (16 U.S.C. 460dd et seq.); the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm-2-460mm-4); the Independent Offices Appropriations Act (31 U.S.C. 9701).

Subpart 3520—Sodium Leasing—General

§ 3520.0-3 Authority

Authority for leasing deposits of chlorides, sulphates, carbonates, borates, silicates or nitrates of sodium, hereinafter referred to as deposits of sodium or any sodium compound, is shown under § 3500.0-3 (a) and (c) of this title.

§ 3520.1 Leasing procedures.

The regulations in this part provide the procedures for qualified applicants to obtain rights to develop deposits of sodium or any sodium compound found on lands available for leasing. The regulations provide for this in the following manner:

(a) "Prospecting permits" allow the permittee to explore for deposits of sodium or any sodium compound.

(b) "Preference right leases" are issued to the holders of prospecting permits who demonstrate the discovery of a valuable deposit of sodium or any sodium compound under the permit and that the lands covered by the permit are chiefly valuable therefore.

(c) "Exploration licenses" allow the licensee to explore known deposits of sodium or any sodium compound to obtain data but do not grant the licensee any preference or other right to a lease.

(d) "Competitive leases" are issued for known deposits of sodium or any sodium compound and allow the lessee to mine the deposit.

(e) "Fringe acreage leases" are issued noncompetitively for known deposits of sodium or any sodium compound adjacent to existing mines on non-Federal lands which can only be mined as part of the existing mining operation.

(f) "Lease modifications" are used to add known deposits of sodium or any sodium compound to an adjacent Federal lease which contains an existing mine provided the deposits can only be mined as part of the existing mining operation.

§ 3520.2 Other applicable regulations.

§ 3520.2-1 General leasing regulations.

Part 3500 of this title contains the general regulations governing the leasing of solid minerals other than coal and oil shale and supplements, as applicable, the regulations in this part. The regulations in Part 3500 of this title include, but are not limited to, such matters as multiple mineral development, environmental review, other agency consent and consultation, and lands not available for leasing. Cross-reference to specific regulations in Part 3500 of this title is provided in this part as an aid to the reader and is not intended to limit the applicability of Part 3500 of this title only to the cross-referenced regulations.

§ 3520.2-2 Special areas.

Part 3580 of this title contains regulations specific to certain national recreation areas and to certain lands patented to the State of California, and as applicable, supplements this part. Except where specific regulations in Part 3580 of this title are applicable, the regulations in this part and Part 3500 of this title shall govern the leasing of deposits of sodium or any sodium compound in those national recreation areas and those patented lands.

§ 3520.3 Allowable acreage holdings.

No person, company, association or corporation may hold at any particular time, directly or indirectly, more than 5,120 acres under prospecting permit and lease in any 1 State, except that, where the Secretary determines pursuant to 30 U.S.C. 184(b)(2) that it is necessary to secure the economic mining of sodium compounds, holdings may equal 15,360 acres.

Subpart 3521—Lease Terms and Conditions

§ 3521.1 Applicability of lease terms and conditions.

The lease terms and conditions set out under this section apply to all leases issued or renewed under Part 3520 of this title. Each lease shall be issued on a form approved by the Director and shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved. Each lease shall authorize, in accordance with its terms and conditions, the mining of sodium, sodium compounds and other related products, including, but not limited to, potassium and potassium compounds.

§ 3521.2 Rental and royalty.

§ 3521.2-1 Rental.

(a) Each lease shall provide for the payment of rental annually and in advance for each acre or fraction thereof during the continuance of the lease at the rate of 25 cents for the first calendar year or fraction thereof, 50 cents for the second, third, fourth and fifth calendar years and $1 for each and every year thereafter. Rental is payable annually on or before January 1. The rental paid for any year shall be credited against the first royalties as they accrue under the lease during the year for which rental was paid.

(b) If the annual rental is not timely remitted, the lessee shall be notified by the authorized officer that, unless payment is made within 30 days from receipt of such notification, action shall be taken to cancel the lease. (See § 3509.4-2)

(c) Remittances of rental shall be made in accordance with § 3503.1 of this title.

§ 3521.2-2 Production royalty.

All leases shall be conditioned upon the payment to the United States of such royalties as may be specified in the lease, which shall be fixed by the authorized officer in advance as provided under § 3503.2-1 of this title, but at not less than 2 per centum of the quantity or gross value of the output of sodium compounds and related products at the point of shipment to market.

§ 3521.3 Duration of lease.

The lease shall be issued for an initial term of 20 years subject to a preferential right in the lessee to renew for a 10-year term at the end of the initial term and at the end of each 10-year period thereafter. (See Subpart 3528)

§ 3521.4 Bonds.

Prior to issuance of a lease under this part, the applicant shall furnish a bond in an amount to be determined by the authorized officer but not less than $5,000. (See Subpart 3504)

§ 3521.5 Special stipulations.

To insure adequate utilization and protection of the lands and their resources, leases shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title. (See also Part 3580)

§ 3521.6 Other applicable regulations.

Leases issued under this part shall also be subject to the conditions set forth in other regulations, including, but not limited to, the following:

(a) Minimum annual production and minimum royalty are covered by § 3503.2-2 of this title.

(b) Suspension of operations and production and suspension of operations are covered by § 3503.3 of this title.

(c) Assignments and subleases are covered by part 3506 of this title.

(d) Cancellation and relinquishment are covered by part 3509 of this title.

(e) Exploration and mining are covered by Part 3590 of this title.

(f) Royalty management is covered by 30 CFR Chapter II, Subchapter A.

Subpart 3522—Sodium Prospecting Permits

§ 3522.1 Areas subject to prospecting.

A prospecting permit may be issued for any area of available public domain or acquired lands subject to leasing where prospecting or exploratory work is necessary to determine the existence or workability of deposits of sodium or any sodium compound. If, within the term of the permit, the permittee makes a discovery of a valuable deposit of any of these sodium compounds, and the lands are determined to be chiefly valuable therefor, the permittee is entitled to a preference right lease.

§ 3522.2 Rights conferred by issuance of prospecting permits.

A permit shall grant the permittee the exclusive right to prospect on and explore the lands to determine the existence of a valuable deposit of sodium or any sodium compound in accordance with the terms and conditions of the permit. The permittee may remove only such material as is necessary to demonstrate the existence of a valuable mineral deposit.

§ 3522.3 Application for prospecting permit.

§ 3522.3-1 Filing requirements.

(a) An application shall be filed on a form approved by the Director or an exact reproduction of that form.

(b) An application shall be filed in triplicate with the proper BLM office.

(c) The application shall be accompanied by a nonrefundable filing fee of $25, and rental for the first year at the rate of 50 cents per acre, or fraction

thereof, made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest subdivision. The rental payment shall not be less than $20.

§ 3522.3-2 Contents of applications.

Each application shall be typewritten, or printed plainly in ink; manually signed in ink and dated by the applicant or applicant's duly authorized attorney-in-fact, and shall contain the following:

(a) The name and address of the applicant;

(b) A statement of the applicant's qualifications and holdings. (See Subpart 3502); and

(c) A complete and accurate land description in compliance with subpart 3501 of this title. The application shall not include more than 2,560 acres in a reasonably compact form.

§ 3522.3-3 Exploration plans.

After initial review and clearance of the application, but prior to issuance of the prospecting permit, the authorized officer shall require the applicant to file an exploration plan in triplicate, reasonably designed to determine the existence or workability of the deposit. The exploration plan shall, insofar as possible, include the following:

(a) The names, addresses and telephone numbers of persons responsible for operations under the plan and to whom notices and orders are to be delivered;

(b) A brief description, including maps, of geologic, water, vegetation, and other physical factors, and the distribution, abundance, and habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed operation within the area where exploration is to be conducted, and the present land use within and adjacent to the area;

(c) A narrative description showing:

(1) The method of exploration and types of equipment to be used;

(2) The measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or their habitat and other natural resources and hazards to public health and safety, including specific actions necessary to meet all applicable laws and regulations;

(3) The method for plugging drill holes; and,

(4) The measures to be taken for surface reclamation, which shall include as appropriate:

(i) A reclamation schedule;

(ii) The method of grading, backfilling, soil stabilization, compacting and contouring;

(iii) The method of soil preparation and fertilizer application;

(iv) The type and mixture of shrubs, trees, grasses, forbs or other vegetation to be planted; and,

(v) The method of planting, including approximate quantity and spacing.

(d) The estimated timetable for each phase of the work and for final completion of the program;

(e) Suitable topographic maps or aerial photographs showing existing bodies of surface water, topographic, cultural and drainage features and the proposed location of drill holes, trenches and roads; and,

(f) Such other data as may be required by the authorized officer.

§ 3522.3-4 Rejection of application.

Any application for a prospecting permit which does not comply with the requirements of this subpart shall be rejected. If the applicant files a new application for the same lands within 30 days of receipt of the rejection, the nonrefundable filing fee and rental payment submitted with the original application shall be applied to the new application, provided the serial number of the original application is shown on the new application. If a new application is not filed within the 30-day period, the advance rental shall be refunded. Priority for the permit shall be established as of the date the corrected application is filed.

§ 3522.4 Determination of priorities.

§ 3522.4-1 Regular filings.

Priority of application shall be determined in accordance with the time of filing.

§ 3522.4-2 Simultaneous filings.

Where more than 1 application is filed at the same time for the same lands, priority shall be determined in accordance with Subpart 1821 of this title.

§ 3522.5 Amendment to application.

An amendment to an application for a prospecting permit to include additional lands shall receive priority for such additional lands from the date of the filing of the amended application. The amended application shall be accompanied by the required advance rental. No additional filing fees are required.

§ 3522.6 Withdrawal of application.

An application for permit may be withdrawn in whole or in part before the permit is signed on behalf of the United States. Upon acceptance of the withdrawal by the authorized officer, the advance rental submitted with the application shall be refunded.

§ 3522.7 Permit bonds.

Prior to issuance of the permit, the applicant shall furnish a bond in an amount determined by the authorized officer, but not less than $1,000. (See Subpart 3504)

§ 3522.8 Terms and conditions of permit.

§ 3522.8-1 Duration of permit.

Prospecting permits are issued for a term of 2 years, and may not be extended.

§ 3522.8-2 Dating of permits.

The permit shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved.

§ 3522.8-3 Annual rental.

Rental at the rate of 50 cents per acre or fraction thereof shall be paid annually on or before the anniversary date of the permit. The rental payment shall not be less than $20.

§ 3522.8-4 Special stipulations.

To insure adequate protection of the lands and their resources, permits shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title. (See also Part 3580)

Subpart 3523—Preference Right Lease

§ 3523.1 Application for preference right lease.

§ 3523.1-1 Filing requirements.

(a) No specific application form is required.

(b) An application shall be filed in triplicate with the proper BLM office no later than 60 days after the prospecting permit expires.

(c) The application shall be accompanied by the first year's rental at the rate of 25 cents per acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. (See Subpart 3503)

§ 3523.1-2 Contents of application.

(a) The application shall include a statement of qualifications and holdings in accordance with Subpart 3502 of this title;

(b) The application shall contain a complete and accurate description of the lands in accordance with § 3501.1 of this title. The lands shall have been included in the prospecting permit and shall not exceed 2,560 acres;

(c) The application shall be accompanied by a map(s) which shows utility systems; the location of any proposed development or mining operations and facilities incidental thereto, including the approximate locations and the extent of the areas to be used for pits, overburden and tailings; and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto; and

(d) The application shall include a narrative statement setting forth:

(1) The anticipated scope, method and schedule of development operations, including the types of equipment to be used;

(2) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed; and

(3) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facilities incidental thereto, on adjacent Federal or non-Federal lands.

§ 3523.2 Review of application.

§ 3523.2-1 Preference right determination.

The authorized officer shall determine whether the permittee has discovered a valuable deposit of sodium or any sodium compound and whether the lands are chiefly valuable therefor. The determination shall be based on data furnished to the authorized officer by the permittee as required by Part 3590 of this title during the life of the permit and supplemental data submitted at the request of the authorized officer to determine the extent and character of the deposit, the anticipated mining and processing methods, the anticipated location, kind and extent of necessary surface disturbance and measures to be taken to reclaim that disturbance.

§ 3523.2-2 Surface management agency.

The surface management agency, if other than the Bureau, shall review the application for preference right lease in accordance with § 3500.9 and Part 3580 of this title, as applicable. The appropriate surface management agency may request supplemental data regarding surface disturbance and reclamation if not otherwise submitted under § 3523.1-2 of this title.

§ 3523.3 Issuance of lease.

The authorized officer shall issue a lease to the holder of a prospecting permit who shows that, within the term of the permit, a valuable deposit of sodium or any sodium compound was discovered and that the lands are chiefly valuable therefor.

§ 3523.4 Rejection of application.

(a) The authorized officer shall reject the application for a preference right lease if the authorized officer determines:

(1) That the applicant did not discover a valuable deposit of sodium and/or the lands are not chiefly valuable therefor;

(2) The applicant did not submit requested information in a timely manner; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) On alleging in an application facts the applicant believes to be sufficient to show entitlement to lease, a permittee shall have the right to a hearing before an Administrative Law Judge in the Office of Hearings and Appeals.

(c) At the hearing, the permittee shall have both the burden of going forward and the burden of proof by a preponderance of the evidence that a valuable deposit of sodium or any sodium compound was discovered and that the lands are chiefly valuable therefor.

Subpart 3524—Exploration License

§ 3524.0-3 Authority.

Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)).

§ 3524.1 Exploration license.

Private parties, jointly or severally, may apply for exploration licenses to explore known, unleased deposits of sodium or any sodium compound to obtain geologic, environmental and other pertinent data concerning such deposits.

§ 3524.2 Regulations applicable.

Except as otherwise specifically provided in this subpart, the regulations pertaining to land use authorizations under Part 2920 of this title shall govern the issuance of exploration licenses.

§ 3524.3 Exploration plan.

All applications for exploration licenses shall include an exploration plan which is in full compliance with § 3522.3-3 of this title. The exploration plan, as approved, shall be attached to, and made a part of, the license.

§ 3524.4 Notice of exploration.

Applicants for exploration licenses shall be required to publish a Notice of Exploration inviting other parties to participate in exploration under the license on a pro rata cost sharing basis.

§ 3524.4-1 Contents of notice.

The Notice of Exploration prepared by the authorized officer and furnished to the applicant shall contain:

(a) The name and address of the applicant;

(b) A description of the lands;

(c) The address of the Bureau office where the exploration plan shall be available for inspection; and

(d) An invitation to the public to participate in the exploration under the license.

§ 3524.4-2 Publication and posting of notice.

(a) The applicant shall publish the Notice of Exploration once a week for 3 consecutive weeks in at least 1 newspaper of general circulation in the area where the lands are located.

(b) The authorized officer shall post the notice in the proper BLM office for 30 days.

§ 3524.4-3 Notice of participation.

Any person who seeks to participate in the exploration program shall notify the authorized officer and the applicant in writing within 30 days after posting.

§ 3524.4-4 Decision on plan and participation.

The authorized officer may issue the license naming participants and acreage covered, establishing core hole spacing and resolving any other issue necessary to minimize surface disturbance and inconsistencies between proposed exploration plans.

§ 3524.5 Submission of data.

The licensee shall furnish the authorized officer copies of all data obtained during exploration. All data shall be considered confidential and not made public until the areas involved have been leased or until the authorized officer determines that the data are not exempt from disclosure under the Freedom of Information Act, whichever occurs first.

§ 3524.6 Modification of exploration plan.

Upon application therefor, a modification of the exploration plan may be approved by the authorized officer.

Subpart 3525—Competitive Leasing

§ 3525.1 Lands subject only to competitive leasing.

Lands available for leasing where prospecting or exploratory work is unnecessary to determine the existence or workability of valuable deposits of sodium or any sodium compound may be leased only through competitive sale to the qualified bidder who offers the highest acceptable bonus bid, except as provided in Subparts 3508 and 3526 of this title. A competitive lease sale may be initiated either through an expression of interest or on Bureau motion.

§ 3525.2 Surface management agency.

Prior to competitive lease offering, the surface management agency shall be consulted in accordance with § 3500.9 and Part 3580 of this title, as applicable.

§ 3525.3 Sale procedures.

§ 3525.3-1 Publication and posting of notice.

Prior to a lease offering, the authorized officer shall publish a notice of lease sale for at least 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated. The notice of lease sale also shall be posted for 30 days in the public room of the proper BLM office.

§ 3525.3-2 Contents of notice.

The lease sale notice shall include:

(a) The time and place of sale;

(b) The bidding method;

(c) A description of the tract being offered;

(d) A description of the sodium deposit or any sodium compound deposit being offered;

(e) The minimum bid to be considered; and

(f) Information on where a detailed statement of the terms and conditions of the lease sale and of the proposed lease may be obtained.

§ 3525.3-3 Detailed statement.

The authorized officer shall also prepare and make available a detailed statement of sale containing:

(a) The proposed lease on a form approved by the Director with terms and conditions, including the rental, royalty rates, bond amount and special stipulations for the particular tract;

(b) An explanation of the manner in which bids may be submitted;

(c) A notice that each bid shall be accompanied by the bidder's qualifications (See Subpart 3502) and one-fifth of the amount bid;

(d) A notice that the successful bidder(s) shall be required, prior to lease issuance, to pay their proportionate share of the total cost of the publication of the sale notice;

(e) A warning to all bidders concerning 18 U.S.C. 1860 which prohibits unlawful combination or intimidation of bidders;

(f) A statement that the Secretary reserves the right to reject any and all bids, and the right to offer the lease to the next qualified bidder if the successful bidder fails to obtain the lease for any reason; and

(g) Any other information deemed appropriate.

§ 3525.4 Bid opening.

All bids shall be opened and announced at the time and date specified in the notice of lease sale, but no bids shall be accepted or rejected at that time. Bids received after the time specified in the notice of sale shall not be considered. A bid may be withdrawn or modified prior to the time specified in the notice of sale.

§ 3525.5 Award of lease.

After the authorized officer has determined that the highest qualified bid meets or exceeds fair market value, copies of the lease on the form attached to the detailed statement shall be sent to the successful bidder who shall, within a specified time, sign and return the lease form, pay the balance of the bonus bid, pay the first year's rental, pay the publication costs and furnish the required lease bond.

§ 3525.6 Rejection of bid.

(a) If the high bid is rejected for failure of the successful bidder to sign the lease form and pay the balance of the bonus bid, or otherwise comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited to the United States.

(b) If the lease cannot be awarded for reasons determined by the authorized officer to be beyond the control of the successful bidder, the authorized officer shall reject the bid and the deposit submitted with the bid shall be returned.

Subpart 3526—Noncompetitive Leasing—Fringe Acreage Leases and Lease Modifications

§ 3526.1 Lands subject to lease.

Lands available for leasing which are known to contain a deposit of sodium or any sodium compound that extends from an adjoining Federal lease or from privately held lands may be leased noncompetitively either by issuance of a new lease for these lands or by adding such lands to an existing Federal lease.

§ 3526.2 Special requirements.

Before a fringe acreage lease may be issued or a lease modified under this subpart, the authorized officer shall determine the following:

(a) The lands are contiguous to an existing Federal lease or to non-Federal lands owned or controlled by the applicant;

(b)(1) The new lease for the fringe acreage is not in excess of 2,560 acres; or

(2) The acreage of the modified lease, including additional lands, is not in excess of 2,560 acres;

(c) The mineral deposit is not in an area of competitive interest to holders of other active mining units in the area;

(d) The lands applied for lack sufficient reserves of the mineral resource to warrant independent development; and

(e) That leasing the lands will result in conservation of natural resources and will provide for economical and efficient recovery as part of a mining unit.

§ 3526.3 Filing requirements.

(a) An application shall be filed in triplicate with proper BLM office. No specific application form is required.

(b) The application shall be accompanied by a nonrefundable filing fee of $25, and an advance rental payment of 25 cents per acre or fraction thereof for a new lease or at the rental rate set forth in the base lease for a modification made payable to the Department of the Interior—Bureau of Land Management.

(c) The application shall:

(1) Make reference to the serial number of the lease if the lands adjoin an existing Federal lease;

(2) Contain a complete and accurate description of the lands desired;

(3) Include a showing that a sodium deposit or any sodium compound deposit extends from the applicant's adjoining lease or from private lands owned or controlled by the applicant; and

(4) Include proof of ownership or control of the mineral deposit in the adjoining lands if not under a Federal lease.

§ 3526.4 Surface management agency.

The surface management agency, if other than the Bureau, shall be consulted in accordance with § 3500.9 and Part 3580 of this title.

§ 3526.5 Payment of bonus.

Prior to the issuance of a new lease or a modification of an existing lease, the applicant shall be required to pay a bonus in an amount determined by the

authorized officer based on an appraisal. In no event shall such payment be less than $1 per acre or fraction thereof.

§ 3526.6 Terms and conditions of lease.

New leases shall be issued subject to the terms and conditions set out under Subpart 3521 of this title. The terms and conditions of a modified lease shall be the same as in the existing lease.

Subpart 3527—Use Permits

§ 3527.1 Use permits.

A permittee or lessee may be granted a right to use, during the life of the permit or lease, the surface of unoccupied non-mineral public lands, not to exceed 40 acres, that are not included within the boundaries of a national forest, for camp sites, refining works and other purposes connected with, if necessary to, the proper development and use of the deposits covered by the permit or lease.

§ 3527.1-1 Applications.

Applications for permits to use additional lands shall be filed in triplicate in the proper BLM office. No specific form is required. Each application shall be accompanied by a nonrefundable $25 filing fee and the first year's rental. The rental payment shall not be less than $20.

§ 3527.1-2 Rental.

(a) The annual rental charge for use of such lands shall not be less than $1 an acre or fraction thereof. Payment of the rental shall be made on or before the anniversary date of the permit and also shall be required on all use permits issued prior to the effective date of this section.

(b) Any use permit shall terminate if the permittee or lessee fails to pay the required rental within 30 days after service of written notice thereof by the authorized officer.

§ 3527.1-3 Additional requirements.

Applications shall set forth the specific reasons why the permittee or lessee needs the additional lands for the use named, describe the lands desired in accordance with Subpart 3501 of this title and also set forth the reasons why the lands are desirable and adapted to the use named, either in point of location, topography or otherwise, and shall assure that they are unoccupied and unappropriated. The application shall also contain an agreement to pay the annual charge prescribed in the permit.

§ 3527.2 Approval.

A use permit shall be issued on a form approved by the Director and dated as of the first day of the month after its issuance unless the applicant requests in writing that it be dated the first day of the month of issuance.

Subpart 3528—Lease Renewals

§ 3528.1 Applications.

An application for lease renewal shall be filed at least 90 days prior to the expiration of the lease term. No specific form is required. All applications shall be filed in triplicate in the proper BLM office together with a nonrefundable $25 filing fee and an advance rental payment of $1 per acre or fraction thereof.

§ 3528.2 Bonds.

Prior to the issuance of a renewal lease, the lessee may be required to furnish a new bond as prescribed by Subpart 3504 of this title.

§ 3528.3 Failure to apply for renewal.

If the holder of a lease fails to apply for renewal as provided in § 3528.1 of this title, the lease shall expire on the last day of the current lease term.

§ 3528.4 Lease terms and conditions.

Each lease, if renewed, shall be issued on a form approved by the Director and shall be effective the first day of the month following its approval by the authorized officer or the first day of the month following the expiration of the current lease, whichever is later, and shall otherwise be subject to the terms and conditions set forth under Subpart 3521 of this title.

PART 3530—POTASSIUM

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Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359); the Federal Land Policy and Management Act of 1976 (43 U.S.C.1701 et seq.); the Act of March 3, 1933, as amended

(47 Stat. 1497); section 10 of the Act of August 4, 1939 (43 U.S.C. 387); the Act of October 8, 1964 (16 U.S.C. 460n et seq.); the Act of November 8, 1965 (16 U.S.C. 460q et seq.); the Act of October 2, 1968 (16 U.S.C. 90c et seq.); the Act of October 27, 1972 (16 U.S.C. 460dd et seq.); the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm-2-460mm-4); the Independent Offices Appropriations Act (31 U.S.C 9701).

Subpart 3530—Potassium Leasing—General

§ 3530.0-3 Authority.

Authority for leasing deposits of chlorides, sulphates, carbonates, borates, silicates or nitrates of potassium, hereinafter referred to as deposits of potassium or any potassium compound, is shown under § 3500.0-3 (a) and (c) of this title.

§ 3530.1 Leasing procedures.

The regulations in this part provide the procedures for qualified entities to obtain rights to develop deposits of potassium or any potassium compound found on lands available for leasing. The regulations provide for this in the following manner:

(a) "Prospecting permits" allow the permittee to explore for deposits of potassium or any potassium compound.

(b) "Preference right leases" are issued to the holders of prospecting permits who demonstrate the discovery of a valuable deposit of potassium or any potassium compound under the permit and the lands covered by the permit are chiefly valuable for potassium or any potassium compound.

(c) "Exploration licenses" allow the licensee to explore known deposits of potassium or any potassium compound to obtain data but do not grant the licensee any preference or other right to a lease.

(d) "Competitive leases" are issued for known deposits of potassium or any potassium compound and allow the lessee to mine the deposit.

(e) "Fringe acreage leases" are issued noncompetitively for known deposits of potassium or any potassium compound adjacent to existing mines on non-Federal lands which can only be mined as part of the existing mining operation.

(f) "Lease modifications" are used to add known deposits of potassium or any potassium compound to an adjacent Federal lease which contains an existing mine, provided the deposits can only be mined as part of the existing mining operation.

§ 3530.2 Other applicable regulations.

§ 3530.2-1 General leasing regulations.

Part 3500 of this title contains the general regulations governing the leasing of solid minerals other than coal and oil shale and supplements, as applicable, the regulations in this part. The Part 3500 regulations include, but are not limited to, such matters as multiple mineral development, environmental review, other agency consent and consultation, and lands not available for leasing. Cross-reference to specific regulations in Part 3500 is provided in this part as an aid to the reader and is not intended to limit the applicability of Part 3500 only to the cross-referenced regulations.

§ 3530.2-2 Special areas.

Part 3580 of this title contains regulations specific to certain national recreation areas and to certain lands patented to the State of California, and as applicable, supplements this part. Except where specific regulations in Part 3580 of this title are applicable, the regulations in this part and Part 3500 of this title shall govern the leasing of deposits of potassium or any potassium compound in those national recreation areas and those patented lands.

§ 3530.3 Allowable acreage holdings.

No person, association or corporation shall hold at any particular time, either directly or indirectly, more than 51,200 acres in permits and leases in any 1 State, except, the authorized officer may authorize additional acreage if he/she finds, upon a satisfactory showing by the applicant, that the additional acreage is needed for the economic and efficient extraction of potassium from concentrated brines in connection with the lessee's existing mining operations.

Subpart 3531—Lease Terms and Conditions

§ 3531.1 Applicability of lease terms and conditions.

The lease terms and conditions set out under this section apply to all leases issued or readjusted under Part 3530 of this title. Each lease shall be issued on a form approved by the Director and shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved. Each lease shall authorize, in accordance with its terms and conditions, the mining of potassium, potassium compounds and other related products, including, but not limited to, sodium and sodium compounds.

§ 3531.2 Rental and royalty.

§ 3531.2-1 Rental.

(a) Each lease shall provide for the payment of rental at the rate of 25 cents per acre or fraction thereof for the first calendar year or fraction thereof, 50 cents for the second, third, fourth and fifth years and $1 for the sixth and each succeeding year during the continuance of the lease. Rental is payable annually on or before January 1. The rental paid for any year shall be credited against the first royalties that accrue under the lease during the year for which the rental was paid.

(b) If the annual rental is not timely remitted, the lessee shall be notified by the authorized officer that, unless payment is made within 30 days from receipt of such notification, action shall be taken to cancel the lease. (See § 3509.4-2)

(c) Remittances of rental shall be made in accordance with § 3503.1 of this title.

§ 3531.2-2 Production royalty.

All leases shall be conditioned upon the payment of such royalties as may be specified in the lease as fixed by the authorized officer in advance as provided under § 3503.2-1 of this title, but shall not be less than 2 per centum of the quantity or gross value of the output of potassium compounds and other related products, except sodium, at the point of shipment to market.

§ 3531.3 Duration of lease.

The lease shall be issued for an indeterminate period subject to the Secretary's right of reasonable readjustment of lease terms and conditions at the end of each 20-year period.

§ 3531.4 Readjustment.

(a) The terms and conditions of a lease are subject to reasonable readjustment at the end of each 20-year period following the effective date of the lease unless otherwise provided by law at the time of expiration of such period. Prior to the expiration of each 20-year period, the authorized officer shall transmit proposed readjusted terms and conditions to the lessee. If the authorized officer fails to transmit the proposed readjusted terms and conditions prior to the expiration of the 20-year period, the right to readjust the lease shall have been waived until the expiration of the next 20-year term.

(b) The lessee is deemed to have agreed to the readjusted terms and conditions unless, within 60 days after receiving them, the lessee files an objection to the readjusted terms or relinquishes the lease. The authorized officer shall issue a decision responding to the objections, and if the response is adverse to the lessee, the decision shall grant the right of appeal under Part 4 of

this title. The effective date of the readjustment shall not be affected by the filing of objections or by the filing of a notice of appeal.

(c) Except as provided in this paragraph, the readjusted lease terms and conditions shall be effective pending the outcome of the objections of the appeal provided for in paragraph (b) of this section unless the authorized officer provides otherwise. Upon the filing of an objection or appeal, the obligation to pay any increased readjusted royalties, minimum royalties and rentals shall be suspended pending the outcome of the objection or appeal. However, any such increased royalties, minimum royalties and rentals shall accrue during the pendency of the appeal, commencing with the effective date of the readjustment. If the increased royalties, minimum royalties and rentals are sustained by the decision on the objection or on appeal, the accrued balance, plus interest at the rate specified for late payment by the Service shall be payable (See Part 3590). Pending the decision on the objection or the appeal, the royalties, minimum royalties and rentals shall be payable as specified by the lease terms and conditions in effect prior to the end of the 20-year period

§ 3531.5 Bonds.

Prior to issuance of a lease under this part, the applicant shall furnish a bond in an amount to be determined by the authorized officer but not less than $5,000. (See Subpart 3504)

§ 3531.6 Special stipulations.

To insure adequate utilization and protection of the lands and their resources, leases shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction.

§ 3531.7 Other applicable regulations.

Leases issued under this part shall also be subject to the conditions set forth in other regulations, including, but not limited to, the following:

(a) Minimum annual production and minimum royalty are covered by § 3503.2–2 of this title.

(b) Suspension of operations and production and suspension of operations are covered by § 3503.3 of this title.

(c) Assignments and subleases are covered by Subpart 3506 of this title.

(d) Cancellation and relinquishment are covered by Subpart 3500 of this title.

(e) Exploration and mining are covered by Part 3590 of this title.

(f) Royalty management is covered by 30 CFR Chapter II, Subchapter A.

Subpart 3532—Potassium Prospecting Permits

§ 3532.1 Areas subject to prospecting.

A prospecting permit may be issued for any area of available public domain and acquired lands subject to leasing where prospecting or exploratory work is necessary to determine the existence or workability of deposits of potassium or any potassium compound, except prospecting permits may not be issued for lands in or adjacent to Searles Lake, California. If, within the term of the permit, the permittee makes a discovery of a valuable deposit of potassium or any potassium compound, and the lands are determined to be chiefly valuable therefor, the permittee is entitled to a preference right lease.

§ 3532.2 Rights conferred by issuance of prospecting permits.

A permit shall grant the permittee the exclusive right to prospect on and explore the lands to determine the existence of a valuable deposit of potassium or any potassium compound in accordance with the terms and conditions of the permit. The permittee may remove only such material as may be necessary to demonstrate the existence of a valuable mineral deposit.

§ 3532.3 Application for prospecting permit.

§ 3532.3–1 Filing requirements.

(a) An application shall be filed on a form approved by the Director or an exact reproduction of such form.

(b) An application shall be filed in triplicate with the proper BLM office.

(c) The application shall be accompanied by a nonrefundable filing fee of $25, and rental for the first year at the rate of 50 cents per acre, or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest subdivision, but shall not be less than $20.

§ 3532.3–2 Contents of applications.

Each application shall be typewritten, or printed plainly in ink; manually signed in ink and dated by the applicant or applicant's duly authorized attorney-in-fact, and shall contain the following:

(a) The name and address of the applicant;

(b) A statement of the applicant's qualifications and holdings. (See Subpart 3502); and

(c) A complete and accurate land description in compliance with Subpart 3501 of this title. The application shall not include more than 2,560 acres in a reasonably compact form.

§ 3532.3–3 Exploration plans.

After initial review and clearance of the application, but prior to issuance of the prospecting permit, the authorized officer shall require the applicant to file an exploration plan in triplicate, reasonably designed to determine the existence or workability of the deposit. The exploration plan shall, insofar as possible, include the following:

(a) The names, addresses and telephone numbers of persons responsible for operations under the plan and to whom notices and orders are to be delivered;

(b) A brief description, including maps, of geologic, water, vegetation, and other physical factors, and the distribution, abundance and habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed operation within the area where exploration is to be conducted, and the present land use within and adjacent to the area;

(c) A narrative description showing:

(1) The method of exploration and types of equipment to be used;

(2) The measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or their habitat and other natural resources, and hazards to public health and safety, including specific actions necessary to meet all applicable laws and regulations;

(3) The method for plugging drill holes; and

(4) The measures to be taken for surface reclamation, which shall include as appropriate:

(i) A reclamation schedule;

(ii) The method of grading, backfilling, soil stabilization, compacting and contouring;

(iii) The method of soil preparation and fertilizer application;

(iv) The type and mixture of shrubs, trees, grasses, forbs or other vegetation to be planted; and

(v) The method of planting, including approximate quantity and spacing;

(d) The estimated timetable for each phase of the work and for final completion of the program;

(e) Suitable topographic maps or aerial photographs showing existing bodies of surface water, topographic, cultural and drainage features, and the proposed location of drill holes, trenches and roads; and

(f) Such other data as may be required by the authorized officer.

§ 3532.3-4 Rejection of application.

Any application for a prospecting permit that does not comply with the requirements of this subpart shall be rejected. If the applicant files a new application for the same lands within 30 days from receipt of the rejection, the nonrefundable filing fee and rental payment submitted with the original application shall be applied to the new application, provided the serial number of the original application is shown on the new application. If a new application is not filed within the 30-day period, the advance rental shall be refunded. Priority for the permit shall be established as of the date the corrected application is filed.

§ 3532.4 Determination of priorities.

§ 3532.4-1 Regular filings.

Priority of application shall be determined in accordance with the time of filing.

§ 3532.4-2 Simultaneous filings.

Where more than 1 application is filed at the same time for the same lands, priority shall be determined in accordance with Subpart 1821 of this title.

§ 3532.5 Amendment to application.

An amendment to an application for a prospecting permit to include additional lands shall receive priority for such additional lands from the date of the filing of the amended application. The amended application shall be accompanied by the required advance rental. No additional filing fees are required.

§ 3532.6 Withdrawal of application.

An application for permit may be withdrawn in whole or in part before the permit is signed on behalf of the United States. Upon acceptance of the withdrawal by the authorized officer, the advance rental submitted with the application shall be refunded.

§ 3532.7 Permit bonds.

Prior to issuance of the permit, the applicant shall furnish a bond in an amount determined by the authorized officer, but not less than $1,000. (See Subpart 3504)

§ 3532.8 Terms and conditions of permit.

§ 3532.8-1 Duration of permit.

Prospecting permits are issued for a term of 2 years, and may be extended for an additional 2 year period. No exploration activities other than those approved as part of an existing exploration plan shall be conducted following expiration of the initial term unless and until the permit has been extended by the authorized officer.

§ 3532.8-2 Dating of permits.

The permit shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved.

§ 3532.8-3 Annual rental.

Rental at the rate of 50 cents per acre or fraction thereof shall be paid annually on or before the anniversary date of the permit. The rental payment shall not be less than $20.

§ 3532.8-4 Special stipulations.

To insure adequate protection of the lands and their resources, permits shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title. (See also Part 3580)

§ 3532.9 Prospecting permit extensions.

§ 3532.9-1 Conditions for, and duration of, extensions.

A permit may be extended for a maximum of 2 years by the authorized officer provided that:

(a) The permittee has been unable, with reasonable diligence, to determine the existence or workability of valuable deposits covered by the permit and desires to continue the prospecting or exploration program. Reasonable diligence means that, in the opinion of the authorized officer, the permittee has drilled a sufficient number of core holes on the permit area or performed other comparable prospecting to explore the permit area within the time allowed; or

(b) The permittee's failure to perform diligent prospecting activities was due to conditions beyond his/her control.

§ 3532.9-2 Application for extension.

(a) Filing requirements.

(1) No specific application form is required.

(2) Application for extension shall be filed in the proper BLM office at least 90 days prior to expiration of the permit.

(3) Applications for extension shall be accompanied by a nonrefundable filing fee of $25, and advance rental of 50 cents per acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20.

(b) The application for extension shall, if applicable:

(1) Demonstrate that the permittee has met the conditions for extension set forth in § 3532.9-1 of this title;

(2) Demonstrate the permittee's diligent prospecting activities; and

(3) Show how much additional time is necessary to complete prospecting work.

§ 3532.9-3. Effective date.

The permit extension shall become effective as of the date of approval.

Subpart 3533—Preference Right Lease

§ 3533.1 Application for preference right lease.

§ 3533.1-1 Filing requirements.

(a) No specific application form is required.

(b) An application shall be filed in triplicate with the proper BLM office no later than 60 days after the prospecting permit expires.

(c) The application shall be accompanied by the first year's rental at the rate of 25 cents per acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. (See Subpart 3503)

§ 3533.1-2 Contents of application.

(a) The application shall include a statement of qualifications and holdings in accordance with Subpart 3502 of this title.

(b) The application shall contain a complete and accurate description of the lands in accordance with § 3501.1 of this title. The lands shall have been included in the prospecting permit and shall not exceed 2,560 acres.

(c) The application shall be accompanied by a map(s) which shows utility systems; the location of any proposed development or mining operations and facilities incidental thereto, including the approximate locations and the extent of the areas to be used for pits, overburden and tailings; and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto.

(d) The application shall include a narrative statement setting forth:

(1) The anticipated scope, method and schedule of development operations, including the types of equipment to be used;

(2) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed; and

(3) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or

planned mining operations, or facilities incidental thereto, on adjacent Federal or non-Federal lands.

§ 3533.2 Review of application.

§ 3533.2-1 Preference right determination.

The authorized officer shall determine whether the permittee has discovered a valuable deposit of potassium or any potassium compound and whether the lands are chiefly valuable therefor. The determination shall be based on data furnished to the authorized officer by the permittee as required by Part 3590 of this title during the life of the permit and supplemental data submitted at the request of the authorized officer to determine the extent and character of the deposit, the anticipated mining and processing methods, the anticipated location, kind and extent of necessary surface disturbance and measures to be taken to reclaim that disturbance.

§ 3533.2-2 Surface management agency.

The surface management agency, if other than the Bureau, shall review the application for preference right lease in accordance with § 3500.9 and Part 3580 of this title, as applicable. The appropriate surface management agency may request supplemental data regarding surface disturbance and reclamation if not otherwise submitted under § 3533.1-2 of this title.

§ 3533.3 Issuance of lease.

The authorized officer shall issue a lease to the holder of a prospecting permit who shows that, within the term of the permit, a valuable deposit of potassium or any potassium compound was discovered and that the lands are chiefly valuable therefor.

§ 3533.4 Rejection of application.

(a) The authorized officer shall reject an application for a preference right lease if the authorized officer determines:

(1) That the applicant did not discover a valuable deposit of potassium and/or the lands are not chiefly valuable therefor;

(2) The applicant did not submit in a timely manner requested information; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) On alleging in an application facts the applicant believes to be sufficient to show entitlement to a lease, a permittee shall have the right to a hearing before an Administrative Law Judge in the Office of Hearings and Appeals.

(c) At the hearing, the permittee shall have both the burden of going forward and the burden of proof by a preponderance of the evidence that a valuable deposit of potassium or any potassium compound was discovered and that the lands are chiefly valuable therefor.

Subpart 3534—Exploration License

§ 3534.0-3 Authority.

Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)).

§ 3534.1 Exploration license.

Private parties, jointly or severally, may apply for exploration licenses to explore known, unleased deposits of potassium or any potassium compound to obtain geologic, environmental and other pertinent data concerning such deposits.

§ 3534.2 Regulations applicable.

Except as otherwise specifically provided in this subpart, the regulations pertaining to land use authorizations under Part 2920 of this title shall govern the issuance of exploration licenses.

§ 3534.3 Exploration plan.

All applications for exploration licenses shall include an exploration plan which is in full compliance with § 3532.3-3 of this title. The exploration plan, as approved, shall be attached to, and made a part of, the license.

§ 3534.4 Notice of exploration.

Applicants for exploration licenses shall be required to publish a Notice of Exploration inviting other parties to participate in exploration under the license on a pro rata cost sharing basis.

§ 3534.4-1 Contents of notice.

The Notice of Exploration prepared by the authorized officer and furnished to the applicant shall contain:

(a) The name and address of the applicant;

(b) A description of the lands;

(c) The address of the Bureau office where the exploration plan shall be available for inspection; and

(d) An invitation to the public to participate in the exploration under the license.

§ 3534.4-2 Publication and posting of notice.

(a) The applicant shall publish the Notice of Exploration once a week for 3 consecutive weeks in at least 1 newspaper of general circulation in the area where the lands are located.

(b) The authorized officer shall post the notice in the proper BLM office for 30 days.

§ 3534.4-3 Notice of participation.

Any person who seeks to participate in the exploration program shall notify the authorized officer and the applicant in writing within 30 days after posting of the Notice of Exploration.

§ 3534.4-4 Decision on plan and participation.

The authorized officer may issue the license naming participants and acreage covered, establishing core hole spacing and resolving any other issue necessary to minimize surface disturbance and inconsistencies between proposed exploration plans.

§ 3534.5 Submission of data.

The licensee shall furnish the authorized officer copies of all data obtained during exploration. All data shall be considered confidential and not made public until the areas involved have been leased or until the authorized officer determines that the data are not exempt from disclosure under the Freedom of Information Act, whichever occurs first.

§ 3534.6 Modification of exploration plan.

Upon application therefor, a modification of the exploration plan may be approved by the authorized officer.

Subpart 3535—Competitive Leasing

§ 3535.1 Lands subject only to competitive leasing.

(a) Lands available for leasing where prospecting or exploratory work is unnecessary to determine the existence or workability of a valuable deposit of potassium or any potassium compound may be leased only through competitive sale to the qualified bidder who offers the highest acceptable bonus bid, except as provided in Parts 3508 and 3536 of this title. A competitive lease sale may be initiated either through an expression of interest or on Bureau motion.

(b) Leases may be offered for lands in or adjacent to Searles Lake, California, without regard to the quantity or quality of the potassium deposit that may be present therein.

§ 3535.2 Surface management agency.

Prior to competitive lease offering, the surface management agency shall be consulted in accordance with § 3500.9 and Part 3580 of this title, as applicable.

§ 3535.3 Sale procedures.

§ 3535.3-1 Publication and posting of notice.

Prior to a lease offering, the authorized officer shall publish a notice of lease sale for at least 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated. The notice of lease

sale also shall be posted for 30 days in the public room of the proper BLM office.

§ 3535.3-2 Contents of notice.

The lease sale notice shall include:

(a) The time and place of sale;

(b) The bidding method;

(c) A description of the tract being offered;

(d) A description of the deposit of potassium or any potassium compound being offered;

(e) The minimum bid to be considered; and

(f) Information on where a detailed statement of the terms and conditions of the lease sale and of the proposed lease may be obtained.

§ 3535.3-3 Detailed statement.

The authorized officer shall also prepare and make available a detailed statement of sale containing:

(a) The lease form approved by the Director with terms and conditions, including the rental, royalty rates, bond amount and special stipulations;

(b) An explanation of the manner in which bids may be submitted;

(c) A notice that each bid shall be accompanied by the bidder's qualifications (See Subpart 3502) and one-fifth of the amount bid;

(d) A notice that the successful bidder(s) shall be required, prior to lease issuance, to pay their proportionate share of the total cost of the publication of the sale notice;

(e) A warning to all bidders concerning 18 U.S.C. 1860 which prohibits unlawful combination or intimidation of bidders;

(f) A statement that the Secretary reserves the right to reject any and all bids, and the right to offer the lease to the next qualified bidder if the successful bidder fails to obtain the lease for any reason; and

(g) Any other information deemed appropriate.

§ 3535.4 Bid opening.

All bids shall be opened and announced at the time and date specified in the notice of lease sale, but no bids shall be accepted or rejected at that time. Bids received after the time specified in the notice of sale shall not be considered. A bid may be withdrawn or modified prior to the time specified in the notice of sale.

§ 3535.5 Award of lease.

After the authorized officer has determined that the highest qualified bid meets or exceeds fair market value, copies of the lease on the form attached to the detailed statement shall be sent to the successful bidder who shall, within a specified time, sign and return the lease form, pay the balance of the bonus bid, pay the first year's rental, pay the publication costs and furnish the required lease bond.

§ 3535.6 Rejection of bid.

(a) If the high bid is rejected for failure of the successful bidder to sign the lease form and pay the balance of the bonus bid, or otherwise comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited to the United States.

(b) If the lease cannot be awarded for reasons determined by the authorized officer to be beyond the control of the successful bidder, the authorized officer shall reject the bid and the deposit submitted with the bid shall be returned.

Subpart 3536—Noncompetitive Leasing—Fringe Acreage Leases and Lease Modifications

§ 3536.1 Lands subject to lease.

Lands available for leasing which are known to contain a deposit of potassium or any potassium compound that extends from an adjoining Federal lease or from privately held lands may be leased noncompetitively either by issuance of a new lease for these lands or by adding such lands to an existing Federal lease.

§ 3536.2 Special requirements.

Before a fringe acreage lease may be issued or a lease modified under this subpart, the authorized officer shall determine the following:

(a) The lands are contiguous to an existing Federal lease or to non-Federal lands owned or controlled by the applicant;

(b)(1) The new lease for the fringe acreage is not in excess of 2,560 acres; or

(2) The acreage of the modified lease, including additional lands, is not in excess of 2,560 acres;

(c) The mineral deposit is not in an area of competitive interest to holders of other active mining units in the area;

(d) The lands applied for lack sufficient reserves of the mineral resource to warrant independent development; and

(e) That leasing the lands will result in conservation of natural resources and will provide for economical and efficient recovery as part of a mining unit.

§ 3536.3 Filing requirements.

(a) An application shall be filed in triplicate with the proper BLM office. No specific application form is required.

(b) The application shall be accompanied by a nonrefundable filing fee of $25, and an advance rental payment of 25 cents per acre or fraction thereof for a new lease or at the rental rate set forth in the base lease for a modification made payable to the Department of the Interior—Bureau of Land Management.

(c) The application shall:

(1) Make reference to the serial number of the lease if the lands adjoin an existing Federal lease;

(2) Contain a complete and accurate description of the lands desired;

(3) Include a showing that a deposit of potassium or any potassium compound extends from the applicant's adjoining lease or from private lands owned or controlled by the applicant; and

(4) Include proof of ownership or control of the mineral deposit in the adjoining lands if not under a Federal lease.

§ 3536.4 Surface management agency.

The surface management agency, if other than the Bureau, shall be consulted in accordance with § 3500.9 and Part 3580 of this title, as applicable.

§ 3536.5 Payment of bonus.

Prior to the issuance of a new lease or a modification of an existing lease, the applicant shall be required to pay a bonus in an amount determined by the authorized officer based on an appraisal. In no event shall such payment be less than $1 per acre or fraction thereof.

§ 3536.6 Terms and conditions of lease.

New leases shall be issued subject to the terms and conditions set out under Subpart 3531 of this title. The terms and conditions of a modified lease shall be the same as in the existing lease.

PART 3540—SULPHUR

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Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); the Act of March 3, 1933, as amended (47 Stat. 1487); section 10 of the Act of August 4, 1939 (43 U.S.C. 387); the Act of October 8, 1964 (16 U.S.C. 460n et seq.); the Act of November 8, 1965 (16 U.S.C. 460q et seq.); the Act of October 2, 1968 (16 U.S.C. 90c et seq.); the Act of October 27, 1972 (16 U.S.C. 460dd et seq.); the Alaska National Interest Lands Conservation Act (16 U.S.C.C 460mm–2–460mm–4); the Independent Offices Appropriations Act (31 U.S.C. 9701).

Subpart 3540—Sulphur Leasing—General

§ 3540.0–3 Authority.

Authority for leasing deposits of sulphur is shown under § 3500.0–3 (a) and (c) of this title.

§ 3540.1 Leasing procedures.

The regulations in this part provide the procedures for qualified applicants to obtain rights to develop deposits of sulphur found on public domain lands in New Mexico and Louisiana and on all acquired lands which are available for leasing. The regulations provide for this in the following manner:

(a) "Prospecting permits" allow the permittee to explore for deposits of sulphur.

(b) "Preference right leases" are issued to holders of prospecting permits who demonstrate the discovery of a valuable deposit of sulphur under the permit and demonstrate that the lands covered by the permit are chiefly valuable for sulphur.

(c) "Exploration licenses" allow the licensee to explore known deposits of sulphur to obtain data but do not grant the licensee any preference or other right to a lease.

(d) "Competitive leases" are issued for known deposits of sulphur and allow the lessee to mine the deposit.

(e) "Fringe acreage leases" are issued noncompetitively for known deposits of sulphur adjacent to existing mines on non-Federal lands which can only be mined as part of the existing mining operation.

(f) "Lease modifications" are used to add known deposits of sulphur to an adjacent Federal lease which contains an existing mine provided the deposits can only be mined as part of the existing mining operation.

§ 3540.2 Other applicable regulations.

§ 3540.2–1 General leasing regulations.

Part 3500 of this title contains the general regulations governing the leasing of solid minerals other than coal and oil shale and supplements, as applicable, the regulations in this part. The regulations in Part 3500 of this title include, but are not limited to, such matters as multiple mineral development, environmental review, other agency consent and consultation, and lands not available for leasing. Cross-reference to specific regulations in Part 3500 of this title is provided in this part as an aid to the reader and is not intended to limit the applicability of Part 3500 of this title only to the cross-referenced regulations.

§ 3540.2–2 Special areas.

Part 3580 of this title contains regulations specific to certain national recreation areas and to certain lands patented to the State of California, and as applicable, supplements this part. Except where specific regulations in Part 3580 of this title are applicable, the regulations in this part and Part 3500 of this title shall govern the leasing of sulphur in those national recreation areas and those patented lands.

§ 3540.3 Allowable acreage holdings.

No person, company, association or corporation may hold at any particular time, more than 1,920 acres in the aggregate in 3 prospecting permits and leases in any 1 State.

Subpart 3541—Lease Terms and Conditions

§ 3541.1 Applicability of lease terms and conditions.

The lease terms and conditions set out under this section apply to all leases issued or renewed under Part 3540 of this title. Each lease shall be issued on a form approved by the Director and shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved. Each lease shall authorize, in accordance with its terms and conditions, the mining of sulphur.

§ 3541.2 Rental and royalty.

§ 3541.2–1 Rental.

(A) Each lease shall provide for the payment of rental annually and in advance during the continuance of the lease at the rate of 50 cents per acre or fraction thereof. The rental for any year shall be credited against the first royalties as they accrue under the lease during the year for which rental was paid.

(b) If the annual rental is not timely remitted, the lessee shall be notified by the authorized officer that, unless payment is made within 30 days from receipt of such notification, action shall be taken to cancel the lease. (See § 3509.4–2)

(c) Rental remittances shall be made in accordance with § 3503.1 of this title.

§ 3541.2-2 Production royalty.

All leases shall be conditioned upon the payment to the United States of a royalty of 5 percent of the quantity or gross value of the output of sulphur at the point of shipment to market.

§ 3541.3 Duration of lease.

The lease shall be issued for an initial term of 20 years subject to a preferential right in the lessee to renew for a 10-year term at the end of the initial term and at the end of each 10-year period thereafter. (See Subpart 3547)

§ 3541.4 Bonds.

Prior to issuance of a lease, the applicant shall be required to furnish a bond in an amount to be determined by the authorized officer but not less than $5,000. (See Subpart 3504)

§ 3541.5 Special stipulations.

To insure adequate utilization and protection of the lands and their resources, leases shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title. (See also Part 3580)

§ 3541.6 Other applicable regulations.

Leases issued under this part shall also be subject to the conditions set forth in other regulations, including, but not limited to, the following:

(a) Minimum annual production and minimum royalty are covered by § 3503.2-2 of this title.

(b) Suspension of operations and production and suspension of operations are covered by § 3503.3 of this title.

(c) Assignments and subleases are covered by Subpart 3506 of this title.

(d) Cancellation and relinquishment are covered by Subpart 3509 of this title.

(e) Exploration and mining are covered by Part 3590 of this title.

(f) Royalty management is covered by 30 CFR Chapter II, Subchapter A.

Subpart 3542—Sulphur Prospecting Permits

§ 3542.1 Areas subject to prospecting.

A prospecting permit may be issued for any area of available public domain lands in Louisiana and New Mexico and any acquired lands subject to leasing where prospecting or exploratory work is necessary to determine the existence or workability of sulphur deposits. If, within the term of the permit, the permittee makes a discovery of a valuable deposit of sulphur and the lands are determined to be chiefly valuable therefor, the permittee is entitled to a preference right lease.

§ 3542.2 Rights conferred by issuance of prospecting permits.

A permit shall grant the permittee the exclusive right to prospect on and explore the lands to determine the existence of a valuable deposit of sulphur in accordance with the terms and conditions of the permit. The permittee may remove only such material as is necessary to demonstrate the existence of a valuable mineral deposit.

§ 3542.3 Application for prospecting permit.

§ 3542.3-1 Filing requirements.

(a) An application shall be filed on a form approved by the Director or an exact reproduction of such form.

(b) An application shall be filed in triplicate with the proper BLM office.

(c) The application shall be accompanied by a nonrefundable filing fee of $25, and rental for the first year at the rate of 50 cents per acre, or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest subdivision. The rental payment shall not be less than $20.

§ 3542.3-2 Contents of applications.

Each application shall be typewritten, or printed plainly in ink; manually signed in ink and dated by the applicant or applicant's duly authorized attorney-in-fact, and shall contain the following:

(a) The name and address of the applicant;

(b) A statement of the applicant's qualifications and holdings. (See Subpart 3502); and

(c) A complete and accurate land description in compliance with subpart 3501 of this title. The application shall not include more than 640 acres in a reasonably compact form.

§ 3542.3-3 Exploration plans.

After initial review and clearance of the application, but prior to approval of the prospecting permit, the authorized officer shall require the applicant to file an exploration plan in triplicate, reasonably designed to determine the existence or workability of the deposit. The exploration plan shall, insofar as possible, include the following:

(a) The names, addresses and telephone numbers of persons responsible for operations under the plan and to whom notices and orders are to be delivered;

(b) A brief description, including maps, of geologic, water, vegetation, and other physical factors, and the distribution, abundance and habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed operation within the area where exploration is to be conducted, and the present land use within and adjacent to the area;

(c) A narrative description showing:

(1) The method of exploration and types of equipment to be used;

(2) The measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or their habitat and other natural resources, and hazards to public health and safety, including specific actions necessary to meet all applicable laws and regulations;

(3) The method for plugging drill holes; and,

(4) The measures to be taken for surface reclamation, which shall include as appropriate:

(i) A reclamation schedule;

(ii) The method of grading, backfilling, soil stabilization, compacting and contouring;

(iii) The method of soil preparation and fertilizer application;

(iv) The type and mixture of shrubs, trees, grasses, forbs or other vegetation to be planted; and

(v) The method of planting, including approximate quantity and spacing;

(d) The estimated timetable for each phase of the work and for final completion of the program;

(e) Suitable topographic maps or aerial photographs showing existing bodies of surface water, topographic, cultural and drainage features, and the proposed location of drill holes, trenches and roads; and

(f) Such other data as may be required by the authorized officer.

§ 3542.3-4 Rejection of application.

Any application for a prospecting permit that does not comply with the requirements of this subpart shall be rejected. If the applicant files a new application for the same lands within 30 days of receipt of the rejection, the nonrefundable filing fee and rental payment submitted with the original application shall be applied to the new application, provided the serial number of the original application is shown on the new application. If a new application is not filed within the 30-day period, the advance rental shall be refunded. Priority for the permit shall be established as of the date the corrected application is filed.

§ 3542.4 Determination of priorities.

§ 3542.4-1 Regular filings.

Priority of application shall be determined in accordance with the time of filing.

§ 3542.4-2 Simultaneous filings.

Where more than 1 application is filed at the same time for the same lands priority shall be determined in accordance with Subpart 1821 of this title.

§ 3542.5 Amendment to application.

An amendment to an application for a prospecting permit to include additional lands, not to exceed 640 acres in total, will receive priority for such additional lands from the date of the filing of the amended application. The amended application shall be accompanied by the required advance rental. No additional filing fees are required.

§ 3542.6 Withdrawal of application.

An application for permit may be withdrawn in whole or in part before the permit is signed on behalf of the United States. Upon acceptance of the withdrawal, the advance rental submitted with the application shall be refunded.

§ 3542.7 Permit bonds.

Prior to issuance of the permit, the applicant shall furnish a bond in an amount determined by the authorized officer, but not less than $1,000. (See Subpart 3504)

§ 3542.8 Terms and conditions of permit.

§ 3542.8-1 Duration of permit.

Prospecting permits are issued for a term of 2 years, and may not be extended.

§ 3542.8-2 Dating of permits.

The permit shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved.

§ 3542.8-3 Annual rental.

Rental at the rate of 50 cents per acre or fraction thereof shall be paid annually on or before the anniversary date of the permit. The rental payment shall not be less than $20.

§ 3542.8-4 Special stipulations.

To insure adequate protection of the lands and their resources, permits shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title. (See Part 3580)

Subpart 3543—Preference Right Lease

§ 3543.1 Application for preference right lease.

§ 3543.1-1 Filing requirements.

(a) No specific application form is required.

(b) An application shall be filed in triplicate with the proper BLM office no later than 60 days after the prospecting permit expires.

(c) The application shall be accompanied by the first years' rental at the rate of 50 cents per acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. (See Subpart 3503)

§ 3543.1-2 Contents of application.

(a) The application shall include a statement of qualifications and holdings in accordance with Subpart 3502 of this title.

(b) The application shall contain a complete and accurate description of the lands in accordance with § 3501.1 of this title. The lands shall have been included in the prospecting permit and shall not exceed 640 acres.

(c) The application shall be accompanied by a map(s) which shows utility systems; the location of any proposed development or mining operations and facilities incidental thereto, including the approximate locations and the extent of the areas to be used for pits, overburden and tailings; and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto.

(d) The application shall include a narrative statement setting forth:

(1) The anticipated scope, method and schedule of development operations, including the types of equipment to be used;

(2) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed; and

(3) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facilities incidental thereto, on adjacent Federal or non-Federal lands.

§ 3543.2 Review of application.

§ 3543.2-1 Preference right determination.

The authorized officer shall determine whether the permittee has discovered a valuable deposit of sulphur and whether the lands are chiefly valuable therefor. The determination shall be based on data furnished to the authorized officer by the permittee as required by Part 3590 of this title during the life of the permit and supplemental data submitted at the request of the authorized officer to determine the extent and character of the deposit, the anticipated mining and processing methods, the anticipated location, kind and extent of necessary surface disturbance and measures to be taken to reclaim that disturbance.

§ 3543.2-2 Surface management agency.

The surface management agency, if other than the Bureau, shall review the application for preference right lease in accordance with § 3500.9 and Part 3580 of this title, as applicable. The appropriate surface management agency may request supplemental data regarding surface disturbance and reclamation if not otherwise submitted under § 3543.1-2 of this title.

§ 3543.3 Issuance of lease.

The authorized officer shall issue a lease to the holder of a prospecting permit who shows that, within the term of the permit, a valuable deposit of sulphur was discovered and that the lands are chiefly valuable therefor.

§ 3543.4 Rejection of application.

(a) The authorized officer shall reject an application for a preference right lease if the authorized officer determines:

(1) That the applicant did not discover a valuable deposit of sulphur and/or the lands are not chiefly valuable therefor;

(2) The applicant did not submit in a timely manner requested information; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) On alleging in an application facts the applicant believes to be sufficient to show entitlement to a lease, a permittee shall have the right to a hearing before an Administrative Law Judge in the Office of Hearings and Appeals.

(c) At the hearing, the permittee shall have both the burden of going forward and the burden of proof by a preponderance of the evidence that a valuable deposit of sulphur was discovered and that the lands are chiefly valuable therefor.

Subpart 3544—Exploration License

§ 3544.0-3 Authority.

Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)).

§ 3544.1 Exploration license.

Private parties, jointly and severally, may apply for exploration licenses to

explore known, unleased sulphur deposits to obtain geologic, environmental, and other pertinent data concerning such deposits.

§ 3544.2 Regulations applicable.

Except as otherwise specifically provided in this subpart, the regulations pertaining to land use authorizations under Part 2920 of this title shall govern the issuance of exploration licenses.

§ 3544.3 Exploration plan.

All applications for exploration licenses shall include an exploration plan which is in full compliance with § 3542.3-3 of this title. The exploration plan, as approved, shall be attached to, and made a part of, the license.

§ 3544.4 Notice of exploration.

Applicants for exploration licenses shall be required to publish a Notice of Exploration inviting other parties to participate in exploration under the license on a pro rata cost sharing basis.

§ 3544.4-1 Contents of notice.

The Notice of Exploration prepared by the authorized officer and furnished to the applicant shall contain:

(a) The name and address of the applicant;

(b) A description of the lands;

(c) The address of the Bureau office where the exploration plan shall be available for inspection; and

(d) An invitation to the public to participate in the exploration under the license.

§ 3544.4-2 Publication and posting of notice.

(a) The applicant shall publish the Notice of Exploration once a week for 3 consecutive weeks in at least 1 newspaper of general circulation in the area where the lands are located.

(b) The authorized officer shall post the notice in the proper BLM office for 30 days.

§ 3544.4-3 Notice of participation.

Any person who seeks to participate in the exploration program shall notify the authorized officer and the applicant in writing within 30 days after posting.

§ 3544.4-4 Decision on plan and participation.

The authorized officer may issue the license naming the participants and acreage covered, establishing core hole spacing and resolving any other issue necessary to minimize surface disturbance and inconsistencies between exploration plans.

§ 3544.5 Submission of data.

The licensee shall furnish the authorized officer copies of all data obtained during exploration. All data shall be considered confidential and not made public until the areas involved have been leased or until the authorized officer determines that the data are not exempt from disclosure under the Freedom of Information Act, whichever occurs first.

§ 3544.6 Modification of exploration plan.

Upon application therefor, a modification of the exploration plan may be approved by the authorized officer.

Subpart 3545—Competitive Leasing

§ 3545.1 Lands subject only to competitive leasing.

Lands available for leasing where prospecting or exploratory work is unnecessary to determine the existence or workability of a valuable sulphur deposit may be leased only through competitive sale to the qualified bidder who offers the highest acceptable bonus bid, except as provided in Subparts 3508 and 3546 of this title. A competitive lease sale may be initiated either through an expression of interest or on Bureau motion.

§ 3545.2 Surface management agency.

Prior to competitive lease offering, the surface management agency shall be consulted in accordance with § 3500.9 and Part 3580 of this title, as applicable.

§ 3545.3 Sale procedures.

§ 3545.3-1 Publication and posting of notice.

Prior to a lease offering, the authorized officer shall publish a notice of lease sale for at least 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated. The notice of lease sale shall be posted for 30 days in the public room of the proper BLM office.

§ 3545.3-2 Contents of notice.

The lease sale notice shall include:

(a) The time and place of sale;

(b) The bidding method;

(c) A description of the tract being offered;

(d) A description of the sulphur deposit being offered;

(e) The minimum bid to be considered; and

(f) Information on where a detailed statement of the terms and conditions of the lease sale and of the proposed lease may be obtained.

§ 3545.3-3 Detailed statement.

The authorized officer shall also prepare and make available a detailed statement of sale containing:

(a) The lease form approved by the Director with terms and conditions, including the rental, royalty rates, bond amount and special stipulations;

(b) An explanation of the manner in which bids may be submitted;

(c) A notice that each bid shall be accompanied by the bidder's qualifications (See Subpart 3502) and one-fifth of the amount bid;

(d) A notice that the successful bidder(s) shall be required, prior to lease issuance, to pay their proportionate share of the total cost of the publication of the sale notice.

(e) A warning to all bidders concerning 18 U.S.C. 1860 which prohibits unlawful combination or intimidation of bidders;

(f) A statement that the Secretary reserves the right to reject any and all bids, and the right to offer the lease to the next qualified bidder if the successful bidder fails to obtain the lease for any reason; and

(g) Any other information deemed appropriate.

§ 3545.4 Bid opening.

All bids shall be opened and announced at the time and date specified in the notice of lease sale, but no bids shall be accepted or rejected at that time. Bids received after the time specified in the notice of sale shall not be considered. A bid may be withdrawn or modified prior to the time specified in the notice of sale.

§ 3545.5 Award of lease.

After the authorized officer has determined that the highest qualified bid meets or exceeds fair market value, copies of the lease on the form attached to the detailed statement shall be sent to the successful bidder who shall, within a specified time, sign and return the lease form, pay the balance of the bonus bid, pay the first year's rental, pay the publication costs and furnish the required lease bond.

§ 3545.6 Rejection of bid.

(a) If the high bid is rejected for failure of the successful bidder to sign the lease form and pay the balance of the bonus bid, or otherwise comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited to the United States.

(b) If the lease cannot be awarded for reasons determined by the authorized officer to be beyond the control of the successful bidder, the authorized officer shall reject the bid and the deposit submitted with the bid shall be returned.

Subpart 3546—Noncompetitive Leasing—Fringe Acreage Leases and Lease Modifications

§ 3546.1 Lands subject to lease.

Lands available for leasing which are known to contain a sulphur deposit that extends from an adjoining Federal lease or from privately held lands may be leased noncompetitively either by issuance of a new lease for these lands or by adding such lands to an existing Federal lease.

§ 3546.2 Special requirements.

Before a fringe acreage lease may be issued or a lease modified under this subpart, the authorized officer shall determine the following:

(a) The lands are contiguous to an existing Federal lease or to non-Federal lands owned or controlled by the applicant;

(b)(1) The new lease for the fringe acreage is not in excess of 640 acres; or

(2) The acreage of the modified lease, including additional lands, is not in excess of 640 acres;

(c) The mineral deposit is not in an area of competitive interest to holders of other active mining units in the area;

(d) The lands applied for lack sufficient reserves of the mineral resources to warrant independent development; and

(e) That leasing the lands will result in conservation of natural resources and will provide for economical and efficient recovery as part of a mining unit.

§ 3546.3 Filing requirements.

(a) An application shall be filed in triplicate with the proper BLM office. No specific application form is required.

(b) The application shall be accompanied by a nonrefundable filing fee of $25, and an advance rental payment of 50 cents per acre or fraction thereof for a new lease or at the rental rate set forth in the base lease for a modification made payable to the Department of the Interior—Bureau of Land Management.

(c) The application shall:

(1) Make reference to the serial number of the lease if the lands adjoin an existing Federal lease;

(2) Contain a complete and accurate description of the lands desired;

(3) Include a showing that a sulphur deposit extends from the applicant's adjoining lease or from private lands owned or controlled by the applicant; and

(4) Include proof of ownership or control of the mineral deposit in the adjoining lands if not under a Federal lease.

§ 3546.4 Surface management agency.

The surface management agency, if other than the Bureau, shall be consulted in accordance with § 3500.9 and Part 3580 of this title, as applicable.

§ 3546.5 Payment of bonus.

(a) Prior to the issuance of a new lease or a modification of an existing lease, the applicant shall be required to pay a bonus in an amount determined by the authorized officer based on an appraisal. In no event shall such payment be less than $1 per acre or fraction thereof.

§ 3546.6 Terms and conditions of lease.

New leases shall be issued subject to the terms and conditions set out under Subpart 3541 of this title. The terms and conditions of a modified lease shall be the same as in the existing lease.

Subpart 3547—Lease Renewals

§ 3547.1 Applications.

An application for lease renewal shall be filed at least 90 days prior to the expiration of the lease term. No specific form is required. All applications shall be filed in triplicate in the proper BLM office together with a nonrefundable $25 filing fee and an advance rental payment of 50 cents per acre or fraction thereof.

§ 3547.2 Bonds.

Prior to the issuance of a renewal lease, the lessee may be required to furnish a new bond as prescribed by Subpart 3504 of this title.

§ 3547.3 Failure to apply for renewal.

If the holder of a lease fails to apply for renewal as provided in § 3547.1 of this title, the lease shall expire on the last day of the current lease term.

§ 3547.4 Lease terms and conditions.

Each renewal lease shall be issued on a form approved by the Director and shall be dated effective the first day of the month following its approval by the authorized officer or the first day of the month following the expiration of the current lease, whichever is later, and shall otherwise be subject to the terms and conditions set forth under Subpart 3541 of this title.

PART 3550—"GILSONITE" (INCLUDING ALL VEIN-TYPE SOLID HYDROCARBONS)

Subpart 3350—"Gilsonite" Leasing—General

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Subpart 3554—Exploration License

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3555.1 Lands subject only to competitive leasing.
3555.2 Surface management agency.
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Subpart 3556—Noncompetitive Leasing—Fringe Acreage Leases and Lease Modifications

3556.1 Lands subject to lease.
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3556.3 Filing requirements.
3556.4 Surface management agency.
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Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); the Independent Offices Appropriations Act (31 U.S.C. 9701).

Subpart 3550—"Gilsonite" Leasing—General

§ 3550.0–3 Authority.

(a) Authority for leasing "Gilsonite" (including all vein-type solid hydrocarbons) is shown under § 3500.0–3(a) of this title.

(b) In 1981, Congress amended the Act by including tar sand within the meaning of oil and retaining separate leasing authority for vein-type solid hydrocarbons such as "Gilsonite". Fluid and gaseous hydrocarbons are leased as oil and gas, while bedded deposits are leased either as coal, oil shale or as oil (tar sand). The leasing authority for vein-type solid hydrocarbons, hereinafter referred to as "Gilsonite", is implemented by the regulations in this part.

§ 3550.1 Leasing procedures.

The regulations in this part provide the procedures for qualified applicants to obtain rights to develop deposits of "Gilsonite", found on lands available for leasing. The regulations provide for this in the following manner:

(a) "Prospecting permits" allow the permittee to explore for deposits of "Gilsonite".

(b) "Preference right leases" are issued to holders of prospecting permits who demonstrate the discovery of a valuable deposit of "Gilsonite" under the permit.

(c) "Exploration licenses" allow the licensee to explore known deposits of "Gilsonite" to obtain data but do not grant the licensee any preference or other right to a lease.

(d) "Competitive leases" are issued for known deposits of "Gilsonite" and allow the lessee to mine the deposit.

(e) "Fringe acreage leases" are issued noncompetitively for known deposits of "Gilsonite" adjacent to existing mines on non-Federal lands which can only be mined as part of the existing mining operation.

(f) "Lease modifications" are used to add known deposits of "Gilsonite" to an adjacent Federal lease which contains an existing mine provided the deposits can only be mined as part of the existing mining operation.

§ 3550.2 Other applicable regulations.

§ 3550.2–1 General leasing regulations.

Part 3500 of this title contains the general regulations governing the leasing of solid minerals other than coal and oil shale and supplements, as applicable, the regulations in this part. The regulations in Part 3500 of this title include, but are not limited to, such matters as multiple mineral development, environmental review, other agency consent and consultation, and lands not available for leasing. Cross-reference to specific regulations in Part 3500 of this title is provided in this part as an aid to the reader and is not intended to limit the applicability of Part 3500 of this title only to the cross-referenced regulations.

§ 3550.2–2 Special areas.

Part 3580 of this title contains regulations specific to certain national recreation areas and to certain lands patented to the State of California, and, as applicable, supplements this part. Except where specific regulations in Part 3580 of this title are applicable, the regulations in this part and Part 3500 of this title shall govern the leasing of "Gilsonite" in those national recreation areas and those patented lands.

§ 3550.3 Allowable acreage holdings.

No person, company, association or corporation may hold at any particular time, directly or indirectly, more than 7,680 acres under prospecting permit and lease in any one state.

Subpart 3551—Lease Terms and Conditions

§ 3551.1 Applicability of lease terms and conditions.

The lease terms and conditions set out under this section apply to all leases issued or readjusted under Part 3550 of this title. Each lease shall be issued on a form approved by the Director and shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved. Each lease shall authorize in accordance with its terms and conditions the mining of "Gilsonite".

§ 3551.2 Rental and royalty.

§ 3551.2–1 Rental.

(a) Each lease shall provide for the payment of rental annually and in advance at the rate of 50 cents per acre or fraction thereof. The annual rental payment shall not be less than $20. The rental paid for any year shall be credited against the first royalties as they accrue under the lease during the year for which rental was paid.

(b) If the annual rental is not timely remitted, the lessee shall be notified by the authorized officer that, unless payment is made within 30 days from receipt of such notification, action shall be taken to cancel the lease (See § 3509.4–2).

(c) Remittances of rental shall be made in accordance with § 3503.1 of this title.

§ 3551.2–2 Production royalty.

All leases shall be conditioned upon the payment to the United States of such royalties as may be specified in the lease, which shall be fixed by the authorized officer in advance as provided under § 3503.2–1 of this title.

§ 3551.3 Duration of lease.

The lease shall be issued for 20 years and for so long thereafter as "Gilsonite" is produced in paying quantities subject to the Secretary's right of reasonable readjustment of lease terms and conditions at the end of each 20-year period.

§ 3551.4 Readjustment.

(a) The terms and conditions of a lease are subject to reasonable readjustment at the end of each 20-year period following the effective date of the lease unless otherwise provided by law at the time of expiration of such period. Prior to the expiration of each 20-year period, the authorized officer shall transmit proposed readjusted terms and conditions to the lessee. If the authorized officer fails to transmit the proposed readjusted terms and conditions prior to the expiration of the 20-year period, the right to readjust the lease shall have been waived until the expiration of the next 20-year term.

(b) The lessee is deemed to have agreed to the readjusted terms and conditions unless, within 60 days after receiving them, the lessee files an objection to the readjusted terms or relinquishes the lease. The authorized officer shall issue a decision responding to the objections, and if the response is adverse to the lessee, the decision shall grant the right of appeal under Part 4 of this title. The effective date of the readjustment shall not be affected by

the filing of objections or by the filing of a notice of appeal.

(c) Except as provided in this paragraph, the readjusted lease terms and conditions shall be effective pending a response to the objections or the outcome of the appeal provided for in paragraph (b) of this section unless the authorized officer provides otherwise. Upon the filing of an objection or appeal, the obligation to pay any increased readjusted royalties, minimum royalties and rentals shall be suspended pending the outcome of the objection or appeal. However, any such increased royalties, minimum royalties and rentals shall accrue during the pendency of the objection or appeal, commencing with the effective date of the readjustment. If the increased royalties, minimum royalties and rentals are sustained by the decision on the objection or on appeal, the accrued balance, plus interest at the rate specified for late payment by the Service shall be payable (See Part 3590). Pending the decision on the objection or the appeal, the royalties, minimum royalties and rentals shall be payable as specified by the lease terms and conditions in effect prior to the end of the 20-year period.

§ 3551.5 Bonds.

Prior to issuance of a lease, the applicant shall furnish a bond in an amount to be determined by the authorized officer, but not less than $5,000 (See Subpart 3504).

§ 3551.6 Special stipulations.

To insure adequate utilization and protection of the lands and their resources, leases shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title (See also Part 3580).

§ 3551.7 Other applicable regulations.

Leases issued under this part shall also be subject to conditions set forth in other regulations, including, but not limited to, the following:

(a) Minimum annual production and minimum royalty are covered by § 3503.2–2 of this title;

(b) Suspension of operations and production and suspension of operations are covered by § 3503.3 of this title;

(c) Assignments and subleases are covered by Subpart 3506 of this title;

(d) Cancellation and relinquishment are covered by Subpart 3509 of this title;

(e) Exploration and mining are covered by Part 3590 of this title; and

(f) Royalty management is covered by 30 CFR Chapter II, Subchapter A.

Subpart 3552—"Gilsonite" Prospecting Permits

§ 3552.1 Areas subject to prospecting.

A prospecting permit may be issued for any area of available public domain or acquired lands subject to leasing where prospecting or exploratory work is necessary to determine the existence or workability of "Gilsonite". Discovery of a valuable deposit of "Gilsonite" within the terms of the permit entitles the permittee to a preference right lease.

§ 3552.2 Rights conferred by issuance of prospecting permits.

A permit shall grant the permittee the exclusive right to prospect on and explore the lands to determine the existence of a valuable deposit of "Gilsonite" in accordance with the terms and conditions of the permit. The permittee may remove only such material as is necessary to demonstrate the existence of a valuable mineral deposit.

§ 3552.3 Application for prospecting permit.

§ 3552.3–1 Filing requirements.

(a) An application shall be filed on a form approved by the Director or an exact reproduction of such form.

(b) An application shall be filed in triplicate with the proper BLM office.

(c) The application shall be accompanied by a nonrefundable filing fee of $25, and rental for the first year at the rate of 50 cents per acre, or fraction thereof made payable to the Department of the Interior-Bureau of Land Management. The rental payment shall be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest subdivision. The rental payment shall not be less than $20.

§ 3552.3–2 Contents of applications.

Each application shall be typewritten, or printed plainly in ink; manually signed in ink and dated by the applicant or applicant's duly authorized attorney-in-fact, and shall contain the following:

(a) The name and address of the applicant;

(b) A statement of the applicant's qualifications and holdings (See subpart 3502); and

(c) A complete and accurate land description in compliance with subpart 3501 of this title. The application shall not include more than 5120 acres in a reasonably compact form.

§ 3552.3–3 Exploration plans.

After initial review and clearance of the application, but prior to issuance of the prospecting permit, the authorized officer shall require the applicant to file in triplicate, an exploration plan reasonably designed to determine the existence or workability of the deposit. The exploration plan shall, insofar as possible, include the following:

(a) The names, addresses and telephone numbers of persons responsible for operations under the plan and to whom notices and orders are to be delivered:

(b) A brief description, including maps, of geologic, water, vegetation and other physical factors, and the distribution, abundance and habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed operation within the area where exploration is to be conducted, and the present land use within and adjacent to the area:

(c) A narrative description showing:

(1) The method of exploration and types of equipment to be used:

(2) The measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or their habitat and other natural resources and hazards to public health and safety, including specific actions necessary to meet all applicable laws and regulations:

(3) The method for plugging drill holes; and

(4) The measures to be taken for surface reclamation, which shall include as appropriate:

(i) A reclamation schedule;

(ii) The method of grading, backfilling, soil stabilization, compacting and contouring;

(iii) The method of soil preparation and fertilizer application;

(iv) The type and mixture of shrubs, trees, grasses, forbs or other vegetation to be planted; and

(v) The method of planting, including approximate quantity and spacing.

(d) The estimated timetable for each phase of the work and for final completion of the program;

(e) Suitable topographic maps or aerial photographs showing existing bodies of surface water, topographic, cultural and drainage features, and the proposed location of drill holes, trenches and roads; and

(f) Such other data as may be required by the authorized officer.

§ 3552.3–4 Rejection of application.

Any application for a prospecting permit which does not comply with the

requirements of this subpart shall be rejected. If the applicant files a new application for the same lands within 30 days of receipt of the rejection, the nonrefundable filing fee and rental payment submitted with the original application shall be applied to the new application, provided the serial number of the original application is shown on the new application. If a new application is not filed within the 30-day period, the advance rental shall be refunded. Priority for the permit shall be established as of the date the corrected application is filed.

§ 3552.4 Determination of priorities.

§ 3552.4-1 Regular filings.

Priority of application shall be determined in accordance with the time of filing.

§ 3552.4-2 Simultaneous filings.

Where more than 1 application is filed at the same time for the same lands, priority shall be determined in accordance with Subpart 1821 of this title.

§ 3552.5 Amendment to application.

An amendment to an application for a prospecting permit to include additional lands shall receive priority for such additional lands from the date of the filing of the amended application. The amended application shall be accompanied by the required advance rental. No additional filing fees are required.

§ 3552.6 Withdrawal of application.

An application for permit may be withdrawn in whole or in part before the permit is signed on behalf of the United States. Upon acceptance of the withdrawal, the advance rental submitted with the application shall be refunded.

§ 3552.7 Permit bonds.

Prior to issuance of the permit, the applicant shall furnish a bond in an amount determined by the authorized officer, but not less than $1,000 (See Subpart 3504).

§ 3552.8 Terms and conditions of permit.

§ 3552.8-1 Duration of permit.

Prospecting permits are issued for an initial terms of 2 years, and may be extended for a period not to exceed 2 years as provided in § 3552.9 of this title. No exploration activities other than those approved as part of an existing exploration plan shall be conducted following expiration of the initial term unless and until the permit has been extended by the authorized officer.

§ 3552.8-2 Dating of permits.

The permit shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved.

§ 3552.8-3 Annual rental.

Rental at the rate of 50 cents per acre or fraction thereof shall be paid annually on or before the anniversary date of the permit. The rental payment shall not be less than $20.

§ 3552.8-4 Special stipulations.

To insure adequate protection of the lands and their resources, permits shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title (See also Part 3580).

§ 3552.9 Prospecting permit extensions.

§ 3552.9-1 Conditions for, and duration of, extensions.

A permit may be extended for a maximum of 2 years at the discretion of the authorized officer provided that:

(a) The permittee has been unable, with reasonable diligence, to determine the existence or workability of valuable deposits covered by the permit and desires to continue the prospecting or exploration program. Reasonable diligence means that, in the opinion of the authorized officer, the permittee has drilled a sufficient number of core holes on the permit area or performed other comparable prospecting to explore the permit area within the time allowed; or

(b) The permittee's failure to perform diligent prospecting activities was due to conditions beyond his/her control.

§ 3552.9-2 Application for extension.

(a) Filing requirements.

(1) No specific application form is required.

(2) Application for extension shall be filed in the proper BLM office at least 90 days prior to expiration of the permit.

(3) Application for extension shall be accompanied by a nonrefundable filing fee of $25, and advance rental of 50 cents per acre, or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20.

(b) The application for extension shall:

(1) Demonstrate that the permittee has met the conditions for extension set out in § 3552.9-1 of this title;

(2) Demonstrate the permittee's diligent prospecting activities; and

(3) Show how much additional time is necessary to complete prospecting work.

§ 3552.9-3 Effective date.

The permit extension shall become effective as of the date of approval.

Subpart 3553—Preference Right Lease

§ 3553.1 Application for preference right lease.

§ 3553.1-1 Filing requirements.

(a) No specific application form is required.

(b) An application shall be filed in triplicate with the proper BLM office no later than 60 days after the prospecting permit expires.

(c) The application shall be accompanied by the first year's rental at the rate of 50 cents per acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20 (see Subpart 3503).

§ 3553.1-2 Contents of application.

(a) The application shall contain a statement of qualifications and holdings in compliance with Subpart 3502 of this title.

(b) The application shall contain a complete and accurate description of the lands in accordance with § 3501.1 of this title. The lands shall have been included in the prospecting permit and shall not exceed 5,120 acres.

(c) The application shall be accompanied by a map(s) which shows utility systems, the location of any proposed development or mining operations and facilities incidental thereto, including the approximate locations and the extent of the areas to be used for pits, overburden and tailings, and the location of water sources or other resources which may be used in the proposed operations or facilities incidential thereto.

(d) The application shall include a narrative statement setting forth:

(1) The anticipated scope, method and schedule of development operations, including the types of equipment to be used;

(2) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed; and

(3) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facilities incidental thereto, on adjacent Federal or non-Federal lands.

§ 3553.2 Review of application.

§ 3553.2-1 Preference right determination.

The authorized officer shall determine whether the permittee has discovered a valuable deposit of "Gilsonite". The determination shall be based on the data furnished to the authorized officer by the permittee as required by Part 3590 of this title during the life of the permit and supplemental data submitted at the request of the authorized officer to determine the extent and character of the deposit, the anticipated mining and processing methods, the anticipated location, kind and extent of necessary surface disturbance and measures to be taken to reclaim that disturbance.

§ 3553.2-2 Surface management agency.

The surface management agency, if other than the Bureau, shall review the application for preference right lease in accordance with § 3500.9 and Part 3580 of this title, as applicable. The appropriate surface management agency may request supplemental data regarding surface disturbance and reclamation if not otherwise submitted under § 3553.1-2 of this title.

§ 3553.3 Issuance of lease.

The authorized officer shall issue a lease to the holder of a prospecting permit who shows that, within the term of the permit, a valuable deposit of "Gilsonite" was discovered.

§ 3553.4 Rejection of application.

(a) The authorized officer shall reject an application for a preference right lease if the authorized officer determines:

(1) That the applicant did not discover a valuable deposit of "Gilsonite";

(2) The applicant did not submit in a timely manner requested information; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) On alleging in an application facts sufficient to show entitlement to a lease, a permittee shall have a right to a hearing before an Administrative Law Judge in the Office of Hearings and Appeals.

(c) At the hearing, the permittee shall have both the burden of going forward and the burden of proof by a preponderance of the evidence that a valuable deposit of "Gilsonite" was discovered.

Subpart 3554—Exploration License

§ 3554.0-3 Authority.

Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)).

§ 3554.1 Exploration License.

Private parties, jointly or severally, may apply for exploration licenses to explore known, unleased "Gilsonite" deposits to obtain geologic, environmental and other pertinent data concerning such deposits.

§ 3554.2 Regulations applicable.

Except as otherwise specifically provided in this subpart, the regulations pertaining to land use authorizations under Part 2920 of this title shall govern the issuance of exploration licenses.

§ 3554.3 Exploration plan.

All applications for exploration licenses shall include an exploration plan which is in full compliance with § 3552.3-3 of this title. The exploration plan, as approved, shall be attached to, and made a part of, the license.

§ 3554.4 Notice of exploration.

Applicants for exploration licenses shall be required to publish a Notice of Exploration inviting other parties to participate in exploration under the license on a pro rata cost sharing basis.

§ 3554.4-1 Contents of Notice.

The Notice of Exploration prepared by the authorized officer and furnished to the applicant shall contain:

(a) The name and address of the applicant;

(b) A description of the lands;

(c) The address of the Bureau office where the exploration plan shall be available for inspection; and

(d) An invitation to the public to participate in the exploration under the license.

§ 3554.4-2 Publication and posting of notice.

(a) The applicant shall publish the Notice of Exploration once a week for 3 consecutive weeks in at least 1 newspaper of general circulation in the area where the lands are located.

(b) The authorized officer shall post the notice in the proper BLM office for 30 days.

§ 3554.4-3 Notice of participation.

Any person who seeks to participate in the exploration program shall notify the authorized officer and the applicant in writing within 30 days after posting.

§ 3554.4-4 Decision on plan and participation.

The authorized officer may issue the license naming participants and acreage covered, establishing core hole spacing and resolving any other issue necessary to minimize surface disturbance and inconsistencies between proposed exploration plans.

§ 3554.5 Submission of data.

The licensee shall furnish the authorized officer copies of all data obtained during exploration. All data shall be considered confidential and not made public until the areas involved have been leased or until the authorized officer determines that the data are not exempt from disclosure under the Freedom of Information Act, whichever occurs first

§ 3554.6 Modification of Exploration Plan.

Upon application by the participants, a modification of the exploration plan may be approved by the authorized officer.

Subpart 3555—Competitive Leasing

§ 3555.1 Lands subject only to competitive leasing.

Lands available for leasing that have surface and/or subsurface evidence to reasonably assure the existence of a valuable deposit of "Gilsonite" may be leased only through competitive sale to the qualified bidder who offers the highest acceptable bonus bid, except as provided in Subparts 3508 and 3556 of this title. A competitive lease sale may be initiated either through an expression of interest or on Bureau motion.

§ 3555.2 Surface management agency.

Prior to competitive lease offering, the surface management agency shall be consulted in accordance with § 3500.9 and Part 3580 of this title, as applicable.

§ 3555.3 Sale procedures.

§ 3555.3-1 Publication and posting of notice.

Prior to a lease offering, the authorized officer shall publish a notice of lease sale for at least 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated. The notice of lease sale shall be posted for 30 days in the public room of the proper BLM office.

§ 3555.3-2 Contents of notice.

The lease sale notice shall include:

(a) The time and place of sale;

(b) The bidding method;

(c) A description of the tract being offered;

(d) A description of the "Gilsonite" deposit being offered;

(e) The minimum bid to be considered; and

(f) Information on where a detailed statement of the terms and conditions of the lease sale and of the proposed lease may be obtained.

§ 3555.3-3 Detailed statement.

The authorized officer shall also prepare and make available a detailed statement of sale containing:

(a) The proposed lease on a form approved by the Director with terms and conditions including the rental, royalty rates, bond amount, and special stipulations;

(b) An explanation of the manner in which bids may be submitted;

(c) A notice that each bid shall be accompanied by the bidder's qualifications (See Part 3502) and one-fifth of the amount bid;

(d) A notice that the successful bidder(s) shall be required, prior to lease issuance, to pay its proportionate share of the total cost of the publication of the sale notice;

(e) A warning to all bidders concerning 18 U.S.C. 1860 which prohibits unlawful combination or intimidation of bidders;

(f) A statement that the Secretary reserves the right to reject any and all bids, and the right to offer the lease to the next qualified bidder if the sucessful bidder fails to obtain the lease for any reason; and,

(g) Any other information deemed appropriate.

§ 3555.4 Bid opening.

All bids shall be opened and announced at the time and date specified in the notice of lease sale, but no bids shall be accepted or rejected at that time. Bids received after the time specified in the notice of sale shall not be considered. A bid may be withdrawn or modified prior to the time specified in the notice of sale.

§ 3555.5 Award of lease.

After the authorized officer has determined that the highest qualified bid meets or exceeds fair market value, copies of the proposed lease attached to the detailed statement shall be sent to the successful bidder who shall, within a specified time, sign and return the lease form, pay the balance of the bonus bid, pay the first year's rental, pay the publication costs and furnish the required lease bond.

§ 3555.6 Rejection of bid.

(a) If the high bid is rejected for failure of the successful bidder to sign the lease form and pay the balance of the bonus bid, or otherwise comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited to the United States.

(b) If the lease cannot be awarded for reasons determined by the authorized officer to be beyond the control of the successful bidder, the authorized officer shall reject the bid and the deposit submitted with the bid shall be returned.

Subpart 3556—Noncompetitive Leasing—Fringe Acreage Leases and Lease Modifications

§ 3556.1 Lands subject to lease.

Lands available for leasing which are known to contain a "Gilsonite" deposit that extends from an adjoining Federal lease or from privately held lands may be leased noncompetitively either by an issuance of a new lease for these lands or by adding such lands to an existing Federal lease.

§ 3556.2 Special requirements.

Before a fringe acreage lease may be issued or a lease modified under this subpart, the authorized officer shall determine the following:

(a) The lands are contiguous to an existing Federal lease or to non-Federal lands owned or controlled by the applicant;

(b)(1) The new lease for the fringe acreage is not in excess of 5120 acres; or

(2) The acreage of the modified lease, including additional lands, is not in excess of 5120 acres;

(c) The mineral deposit is not in an area of competitive interest to holders of other active mining units in the area;

(d) The lands applied for lack sufficient reserves of the mineral resource to warrant independent development; and

(e) Leasing the lands will result in conservation of natural resources and will provide for economical and efficient recovery as part of a mining unit.

§ 3556.3 Filing requirements.

(a) An application shall be filed in triplicate with the proper BLM offfice. No specific application form is required.

(b) The application shall be accompanied by a nonrefundable filing fee of $25, and an advance rental payment of 25 cents per acre or fraction thereof for a new lease or at the rental rate set forth in the base lease for a modification made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20.

(c) The application shall:

(1) Make reference to the serial number of the lease if the lands adjoin an existing Federal lease;

(2) Contain a complete and accurate description of the lands desired;

(3) Include a showing that a "Gilsonite" deposit extends from the applicant's adjoining lease or from private lands owned or controlled by the applicant; and

(4) Include proof of ownership or control of the mineral deposit in the adjoining lands if not under a Federal lease.

§ 3556.4 Surface management agency.

The surface management agency, if other than the Bureau, shall be consulted in accordance with § 3500.9 and Part 3580 of this title, as applicable.

§ 3556.5 Payment of bonus.

Prior to the issuance of a new lease or a modification of an existing lease, the applicant shall be required to pay a bonus in an amount determined by the authorized officer based on an appraisal. In no event, shall such payment be less than $1 per acre or fraction thereof.

§ 3556.6 Terms and conditions of lease.

New leases shall be issued subject to the terms and conditions set out under Subpart 3551 of this title. The terms and conditions of modified leases shall be the same as the existing leases.

PART 3560—HARDROCK MINERALS

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Authority: The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix); Section 3 of the Act of September 1, 1949 (30 U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508(b)); the Act of March 3, 1933, as amended (47 Stat. 1487); Section 10 of the Act of August 4, 1939 (43 U.S.C. 387); the Act of October 8, 1964 (16 U.S.C. 460n et seq.); the Act of November 8, 1965 (16 U.S.C. 460q et seq.); the Act of October 2, 1968 (16 U.S.C. 90c et seq.); the Act of October 27, 1972 (16 U.S.C. 460dd et seq.); the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm–2—460mm–4); the Independent Offices Appropriations Act (31 U.S.C. 9701).

Subpart 3560—Hardrock Minerals Leasing—General

§ 3560.0–3 Authority.

Authority for leasing hardrock minerals are shown under § 3500.0–3 (b) and (c) of this title.

§ 3560.1 Leasing procedures.

The regulations in this part provide the procedures for qualified applicants to obtain rights to develop deposits of hardrock minerals found on certain lands available for leasing. The regulations provide for this in the following manner:

(a) "Prospecting permits" allow the permittee to explore for deposits of hardrock minerals.

(b) "Preference right leases" are issued to holders of prospecting permits who demonstrate the discovery of a valuable deposit of a hardrock mineral(s) under the permit.

(c) "Competitive leases" are issued for known deposits of hardrock minerals and allow the lessee to mine the deposit.

(d) "Fringe acreage leases" are issued noncompetitively for known deposits of hardrock minerals adjacent to existing mines on non-Federal lands which can only be mined as part of the existing mining operation.

(e) "Lease modifications" are used to add known deposits of hardrock minerals to an adjacent Federal lease which contains an existing mine provided the deposits can only be mined as part of the existing mining operation.

§ 3560.2 Other applicable regulations.

§ 3560.2–1 General leasing regulations.

Part 3500 of this title contains the general regulations governing the leasing of solid minerals other than coal and oil shale and supplements, as applicable, the regulations in this part. The Part 3500 regulations include, but are not limited to, such matters as multiple mineral development, environmental review, other agency consent and consultation and lands not available for leasing. Cross-reference to specific regulations in Part 3500 is provided in this part as an aid to the reader and is not intended to limit the applicability of Part 3500 only to the cross-referenced regulations.

§ 3560.2–2 Special areas.

Part 3580 of this title contains regulations specific to certain national recreation areas and to certain lands patented to the State of California, and as applicable, supplements this part. Except where specific regulations in Part 3580 of this title are applicable, the regulations in this part and Part 3500 shall govern the leasing of hardrock minerals in those national recreation areas and those patented lands.

§ 3560.3 Lands subject to lease.

§ 3560.3–1 Department of Agriculture lands.

With the consent of the Secretary of Agriculture and subject to such conditions as he/she may prescribe, the hardrock minerals in the following lands administered by the Secretary of Agriculture are subject to lease:

(a) Lands acquired pursuant to the laws set out in Reorganization Plan No. 3 of 1946: (1) "The Act of March 4, 1917 (39 Stat. 1134; 16 U.S.C. 520); (2) Title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 195, 200, 202, 205; 40 U.S.C. 401, 403a and 408); (3) The 1935 Emergency Relief Appropriations Act of April 8, 1935 (48 Stat. 115, 118); (4) Section 55 of Title I of the Act of August 24, 1935 (49 Stat. 750, 781); and, (5) The Act of July 22, 1937 (50 Stat. 522, 525, 530), as amended by the Act of July 28, 1942 (56 Stat. 725; 7 U.S.C. 1011(c) and 1018)."

(b) Lands added to the Shasta National Forest by the Act of March 19, 1948 (62 Stat. 83).

(c) Portions of Juan Jose Lobato Grant (North Lobato) and of the Anton Chica Grant (El Pueblo) in New Mexico (66 Stat. 285) described in section 1 of the Act of June 28, 1952.

(d) Public domain lands within National Forest lands in Minnesota.

(e) Lands in Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area, subject to the regulations in Subpart 3583 of this title.

§ 3560.3–2 National Park Service Recreation areas.

With the consent of the Regional Director, National Park Service, and subject to such conditions as may be prescribed by the Regional Director, the following national recreation areas administered by the National Park Service are available for leasing subject to the regulations in Subpart 3582 of this title:

(a) Lake Mead National Recreation Area;

(b) Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area;

(c) Ross Lake and Lake Chelan National Recreation Areas; and

(d) Glen Canyon National Recreation Area.

§ 3560.3-3 White Mountains National Recreation Area—Alaska.

The lands within White Mountains National Recreation Area are available for lease subject to the regulations in Subpart 3585 of this title.

§ 3560.3-4 Lands patented to the State of California for park purposes.

The reserved hardrock minerals in certain lands patented to the State of California are available for lease subject to the regulations in Subpart 3574 of this title.

§ 3560.4 Allowable acreage holdings.

No person, company, association or corporation may hold at any particular time, directly or indirectly, more than 20,480 acres in any 1 state under prospecting permit and lease for a particular hardrock mineral or an associated group of hardrock minerals, of which not more than 10,240 acres may be held under lease. However, the authorized officer may authorize a lessee to hold an additional 10,240 acres under lease if he/she finds, upon a satisfactory showing submitted by the lessee, that such additional acreage is necessary to promote the orderly development of the mineral resource, and does not result in undue control of the mineral to be mined, removed and marketed. In any case, the aggregate chargeable acreage held under permit and lease shall not exceed 20,480 acres in any 1 state.

§ 3560.5 Identity of mineral or minerals required.

All applications under this section shall specify the mineral or minerals for which the lease or permit is sought. A permit, if granted, shall be for the mineral or minerals requested and any associated minerals. A preference right lease shall be issued for the mineral(s) specified in the permit for which a valuable deposit has been discovered and for any associated minerals. (See also Subpart 3563 and 3565)

§ 3560.6 Multiple development.

The granting of a hardrock permit or lease for the prospecting, development, or production of deposits for a specific mineral shall not preclude the issuance of other permits or leases for the same lands for deposits of other minerals with suitable stipulations for simultaneous operation. It is recognized, however, that multiple permits or leases for solid hardrock minerals on the same lands would not be compatible in most cases. For this reason, multiple permits or leases for such minerals generally shall not be issued for the same lands.

§ 3560.7 Hardrock mineral specimen collection.

The surface management agency having jurisdiction over the lands shall determine which areas and under what conditions mineral specimens may be collected for non-commercial purposes (e.g., recreation, hobby collecting, scientific or research specimens, etc), and whether an approved permit shall be required prior to entry on the lands by the collector. If such a permit is necessary, it shall be obtained from the responsible official of the surface management agency who shall have the discretionary authority to issue the permit, determine the permit fee, if any, and specify the terms and conditions of the permit.

Subpart 3561—Lease Terms and Conditions

§ 3561.1 Applicability of lease terms and conditions.

The lease terms and conditions set out under this section apply to all leases issued or renewed under Part 3560 of this title. Each lease shall be issued on a form approved by the Director and shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved. Each lease shall authorize in accordance with its terms and conditions the mining of the hardrock mineral(s) for which the lease issued, including any associated minerals.

§ 3561.2 Rental and royalty.

§ 3561.2-1 Rental.

(a) Each lease shall provide for the payment of rental at the rate of $1 per acre or fraction thereof each year on or before the anniversary date of the lease. The rental payment shall not be less than $20. The rental paid for any year shall be credited against any royalties which may accrue under the lease during the year for which the rental was paid.

(b) If the annual rental is not timely remitted, the lessee shall be notified by the authorized officer that, unless payment is made within 30 days from receipt of such notification, action shall be taken to cancel the lease. (See § 3509.4-2)

(c) Remittances of rental shall be made in accordance with § 3503.1 of this title.

§ 3561.2-2 Production royalty.

The production royalty shall be determined by the authorized officer on a case-by-case basis as provided in § 3503.2-1 of this title. If hardrock minerals other than those specified in the issued lease should be discovered and mined by the lessee, an applicable royalty rate shall be established by the authorized officer for such mineral(s).

§ 3561.3 Duration of lease.

The lease shall be issued for a period not exceeding 20 years as determined by the authorized officer with a preference right in the lessee to renew for a term not to exceed 10 years at the end of the initial term and at the end of each 10-year period thereafter.

§ 3561.4 Bonds.

Prior to issuance of a lease under this part, the applicant shall furnish a bond in an amount to be determined by the authorized officer but not less than $5,000. (See Subpart 3504)

§ 3561.5 Special stipulations.

To insure adequate utilization and protection of the lands and their resources, leases shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in §3500.9 of this title. (See also Part 3580).

§ 3561.6 Other applicable regulations.

Leases issued under this part shall also be subject to the conditions set forth in other regulations, including, but not limited to, the following:

(a) Minimum annual production and minimum royalty are covered by §3503.2-2 of this title.

(b) Suspension of operations and production and suspension of operations are covered by § 3503.3 of this title.

(c) Assignments and subleases are covered by Subpart 3506 of this title.

(d) Cancellation and relinquishment are covered by Subpart 3509 of this title.

(e) Exploration and mining are covered by Part 3590 of this title.

(f) Royalty management is covered by 30 CFR Chapter II, Subchapter A.

Subpart 3562—Hardrock Minerals Prospecting Permits

§ 3562.1 Areas subject to prospecting.

(A) prospecting permit may be issued for any area of available public domain and acquired lands subject to hardrock mineral leasing where prospecting or exploratory work is necessary to determine the existence or workability of a particular hardrock mineral(s). Discovery of a valuable deposit of any such mineral(s) within the term of the permit entitles the permittee to a preference right lease.

§ 3562.2 Rights conferred by issuance of prospecting permits.

A permit shall grant the permittee the exclusive right to prospect on and explore the lands to determine the existence of a valuable deposit of the mineral(s) for which the permit was issued, such right to be in accordance with the terms and conditions of the permit. The permittee may remove only such material as is necessary to demonstrate the existence of a valuable mineral deposit.

§ 3562.3 Application for prospecting permit.

§ 3562.3-1 Filing requirements.

(a) An application shall be filed on a form approved by the Director or an exact reproduction of that form.

(b) An application shall be filed in triplicate with the proper BLM office.

(c) The application shall be accompanied by a nonrefundable filing fee of $25, and rental for the first year at the rate of 50 cents per acre or fraction thereof made payable to the Department of the Interior-Bureau of Land Management. The rental payment shall be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest subdivision. The rental payment shall not be less than $20.

§ 3562.3-2 Contents of applications.

Each application shall be typewritten, or printed plainly in ink; manually signed in ink and dated by the applicant or applicant's duly authorized attorney-in-fact, and shall contain the following:

(a) The name and address of the applicant;

(b) A statement of the applicant's holdings in accordance with Subpart 3502 of this title;

(c) A complete and accurate land description in compliance with subpart 3501 of this title. The application shall not include more than 2,560 acres in a reasonably compact form; and

(d) The name of mineral(s) for which the permit is sought. (See § 3560.5)

§ 3562.3-3 Exploration plans.

After initial review and clearance of the application, but prior to issuance of the prospecting permit, the authorized officer shall require the applicant to file an exploration plan in triplicate, reasonably designed to determine the existence or workability of the deposit. The exploration plan shall, insofar as possible, include the following:

(a) The names, addresses and telephone numbers of persons responsible for operations under the plan and to whom notices and orders are to be delivered;

(b) A brief description, including maps, of geologic, water, vegetation, and other physical factors, and the distribution, abundance and habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed operation within the area where exploration is to be conducted, and the present land use within and adjacent to the area;

(c) A narrative description showing:

(1) The method of exploration and types of equipment to be used;

(2) The measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or their habitat and other natural resources, and hazards to public health and safety, including specific actions necessary to meet all applicable laws and regulations;

(3) The method for plugging drill holes; and

(4) The measures to be taken for surface reclamation, which shall include as appropriate:

(i) A reclamation schedule;

(ii) The method of grading, backfilling, soil stabilization, compacting and contouring;

(iii) The method of soil preparation and fertilizer application;

(iv) The type and mixture of shrubs, trees, grasses, forbs and other vegetation to be planted; and

(v) The method of planting, including approximate quantity and spacing;

(d) The estimated timetable for each phase of the work and for final completion of the program;

(e) Suitable topographic maps or aerial photographs showing existing bodies of surface water, topographic, cultural and drainage features, and the proposed locations of drill holes, trenches and roads; and

(f) Such other data as may be reasonably required by the authorized officer.

§ 3562.3-4 Rejection of application.

Any application for a prospecting permit that does not comply with the requirements of this subpart shall be rejected. If the applicant files a new application for the same lands within 30 days of receipt of the rejection, the nonrefundable filing fee and rental payment submitted with the original application shall be applied to the new application, provided the serial number of the original application is shown on the new application. If a new application is not filed within the 30-day period, the advance rental shall be refunded. Priority for the permit shall be established as of the date the corrected application is filed.

§ 3562.4 Determination of priorities.

§ 3562.4-1 Regular filings.

Priority of application shall be determined in accordance with the time of filing.

§ 3562.4-2 Simultaneous filings.

Where more than 1 application is filed at the same time for the same lands and for the same mineral, priority shall be determined in accordance with Subpart 1821 of this title.

§ 3562.5 Amendment to application.

An amendment to an application for a prospecting permit to include additional lands shall receive priority for such additional lands from the date of the filing of the amended application. The amended application shall be accompanied by the required advance rental. No additional filing fees are required.

§ 3562.6 Withdrawal of application.

An application for permit may be withdrawn in whole or in part before the permit is signed on behalf of the United States. Upon acceptance of the withdrawal by the authorized officer, the advance rental submitted with the application shall be refunded.

§ 3562.7 Permit bonds.

Prior to issuance of the permit, the applicant shall furnish a bond in an amount determined by the authorized officer, but not less than $1,000. (See Subpart 3504)

§ 3562.8 Terms and conditions of permit.

§ 3562.8-1 Duration of permit.

Prospecting permits are issued for an initial term of 2 years, and may be extended for a period not to exceed 4 years as provided in § 3562.9 of this title. No exploration activities other than those approved as part of an existing exploration plan shall be conducted following expiration of the initial term unless and until the permit has been extended by the authorized officer.

§ 3562.8-2 Dating of permits.

The permit shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved.

§ 3562.8-3 Annual rental.

Rental at the rate of 50 cents per acre or fraction thereof shall be paid annually on or before the anniversary date of the permit. The rental payment shall not be less than $20.

§ 3562.8-4 Special stipulations.

To insure adequate protection of the lands and their resources, permits shall contain such stipulations as may be prescribed by the authorized officer or the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9. (See also Part 3580)

§ 3562.9 Prospecting permit extensions.

§ 3562.9-1 Conditions for, and duration of, extensions.

A permit may be extended for a maximum of 4 years by the authorized officer provided that:

(a) The permittee has been unable with reasonable diligence to determine the existence or workability of valuable deposits of any mineral(s) covered by the permit and desires to continue the prospecting or exploration program. Reasonable diligence means that in the opinion of the authorized officer the permittee has drilled a sufficient number of core holes on the permit area or performed other comparable prospecting to explore the permit area within the time allowed; or

(b) The permittee's failure to perform diligent prospecting activities was due to conditions beyond his/her control.

§ 3562.9-2 Application for extension.

(a)(1) An application for extension shall be filed in the proper BLM office at least 90 days prior to expiration of the permit. No specific application form is required.

(2) Applications for extension shall be accompanied by a nonrefundable filing fee of $25 and the advance rental of 50 cents per acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20.

(b) The application for extension shall:

(1) Demonstrate that the permittee has met the conditions for extension set forth in § 3562.9-1 of this title;

(2) Demonstrate the permittee's diligent prospecting activities; and

(3) Show how much additional time is necessary to complete prospecting work.

§ 3562.9-3 Effective date.

The permit extension shall become effective as of the date of approval.

Subpart 3563—Preference Right Lease

§ 3563.1 Application for preference right lease.

§ 3563.1-1 Filing requirements.

(a) An application shall be filed in triplicate with the proper BLM office no later than 60 days after the prospecting permit expires. No specific form is required.

(b) The application shall be accompanied by the first year's rental at the rate of $1 per acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20. (See Subpart 3503)

§ 3563.1-2 Contents of application.

(a) The application shall include a statement of the applicant's holdings in accordance with Subpart 3502 of this title.

(b) The application shall contain a complete and accurate description of the lands in accordance with § 3501.1 of this title. The lands shall have been included in the prospecting permit and shall not exceed 2,560 acres.

(c) The application shall identify the mineral(s) of which a valuable deposit(s) was discovered.

(d) The application shall be accompanied by a map(s) which shows utility systems; the location of any proposed development or mining operations and facilities incidental thereto, including the approximate locations and extent of the areas to be used for pits, overburden and tailings; and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto.

(e) The application shall include a narrative statement setting forth:

(1) The anticipated scope, method and schedule of development operations, including the types of equipment to be used;

(2) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed; and

(3) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facilities incidental thereto, on adjacent Federal or non-Federal lands.

§ 3563.2 Review of application.

§ 3563.2-1 Preference right determination.

The authorized officer shall determine whether the permittee has discovered a valuable deposit of any mineral covered by the prospecting permit. The determination shall be based on data furnished the authorized officer by the permittee as required by Part 3590 of this title during the life of the permit and supplemental data submitted at the request of the authorized officer to determine the extent and character of the deposit, the anticipated mining and processing methods, the anticipated location, kind and extent of necessary surface disturbance and measures to be taken to reclaim that disturbance.

§ 3563.2-2 Surface management agency.

The surface management agency, if other than the Bureau, shall review the application for preference right lease in accordance with § 3500.9 and Part 3580 of this title, as applicable. The appropriate surface management agency may request supplemental data regarding surface disturbance and reclamation if not otherwise submitted under § 3563.1-2 of this title. On acquired lands administered by the Secretary of Agriculture, supplemental data in addition to that submitted under § 3563.1-2 of this title may be required. Such data will be used in the development of environmental analyses and special stipulations.

§ 3563.3 Issuance of lease.

The authorized officer shall issue a lease to the holder of a prospecting permit who shows that, within the terms of the permit, a valuable deposit of any mineral(s) covered by the prospecting permit was discovered.

§ 3563.4 Rejection of application.

(a) The authorized officer shall reject an application for a preference right lease if the authorized officer determines:

(1) That the applicant did not discover a valuable deposit of any mineral covered by the prospecting permit;

(2) The applicant did not submit in a timely manner requested information; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) On alleging in an application facts the applicant believes to be sufficient to show entitlement to a lease, a permittee shall have a right to a hearing before an Administrative Law Judge in the Office of Hearings and Appeals.

(c) At the hearing, the permittee shall have both the burden of going forward and the burden of proof by a preponderance of the evidence that a valuable deposit of the mineral(s) was discovered.

Subpart 3564—Competitive Leasing

§ 3564.1 Lands subject only to competitive leasing.

Lands where prospecting or exploratory work is unnecessary to determine the existence or workability of a valuable deposit of a particular hardrock mineral may be leased only through competitive sale to the qualified bidder who offers the highest acceptable bonus bid. A competitive lease sale may

be initiated either through an expression of interest or on Bureau motion.

§ 3564.2 Surface management agency.

Prior to competitive lease offering, the surface management agency, if other than the Bureau, shall be consulted in accordance with § 3500.9 and Part 3580 of this title, as applicable. (See also § 3560.3)

§ 3564.3 Sale procedures.

§ 3564.3-1 Publication and posting of notice.

Prior to a lease offering, the authorized officer shall publish a notice of lease sale for at least 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated. The notice of lease sale shall be posted for 30 days in the public room of the proper BLM office.

§ 3564.3-2 Contents of notice.

The lease sale notice shall include:

(a) The time and place of sale;

(b) The bidding method;

(c) A description of the tract being offered;

(d) A description of the mineral deposit being offered;

(e) The minimum bid to be considered; and

(f) Information on where a detailed statement of the terms and conditions of the lease sale and of the proposed lease may be obtained.

§ 3564.3-3 Detailed statement.

The authorized officer shall also prepare and make available a detailed statement of sale containing:

(a) The proposed lease on a form approved by the Director with terms and conditions, including the rental, royalty rates, bond amount and special stipulations;

(b) An explanation of the manner in which bids may be submitted;

(c) A notice that each bid shall be accompanied by the bidder's statement of holdings (See Subpart 3502) and one-fifth of the amount bid;

(d) A notice that the successful bidder(s) shall be required, prior to lease issuance, to pay his/her proportionate share of the total cost of the publication of the sale notice;

(e) A warning to all bidders concerning 18 U.S.C. 1860 which prohibits unlawful combination or intimidation of bidders;

(f) A statement that the Secretary reserves the right to reject any and all bids, and the right to offer the lease to the next qualified bidder if the successful bidder fails to obtain the lease for any reason; and

(g) Any other information deemed appropriate.

§ 3564.4 Bid opening.

All bids shall be opened and announced at the time and date specified in the notice of lease sale, but no bids shall be accepted or rejected at that time. Bids received after the time specified in the notice of sale shall not be considered. A bid may be withdrawn or modified prior to the time specified in the notice of sale.

§ 3564.5 Award of lease.

After the authorized officer has determined that the highest qualified bid meets or exceeds fair market value, copies of the lease on the form attached to the detailed statement shall be sent to the successful bidder who shall, within a specified time, sign and return the lease form, pay the balance of the bonus bid, pay the first year's rental, pay the publication costs and furnish the required lease bond.

§ 3564.6 Rejection of bid.

(a) If the high bid is rejected for failure of the successful bidder to sign the lease form and pay the balance of the bonus bid, or otherwise comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited to the United States.

(b) If the lease cannot be awarded for reasons determined by the authorized officer to be beyond the control of the successful bidder, the authorized officer shall reject the bid and the deposit submitted with the bid shall be returned.

Subpart 3565—Noncompetitive Leasing—Fringe Acreage Leases and Lease Modifications

§ 3565.1 Lands subject to lease.

Lands available for leasing which are known to contain a hardrock mineral deposit that extends from an adjoining Federal lease or from privately held lands may be leased noncompetitively either by issuance of a new lease for these lands or by adding such lands to an existing Federal lease.

§ 3565.2 Special requirements.

Before a fringe acreage lease may be issued or a lease modified under this subpart, the authorized officer shall determine the following:

(a) The lands are contiguous to an existing Federal lease or to non-Federal lands owned or controlled by the applicant;

(b)(1) The new lease for fringe acreage is not in excess of 2,560 acres; or

(2) The acreage of the modified lease, including additional lands, is not in excess of 2,560 acres;

(c) The mineral deposit is not in an area of competitive interest to holders of other active mining units in the area;

(d) The lands applied for lack of sufficient reserves of the mineral resource to warrant independent development; and

(e) That leasing the lands will result in conservation of natural resources and will provide for economical and efficient recovery as part of a mining unit.

§ 3565.3 Filing requirements.

(a) An application shall be filed in triplicate with the proper BLM office. No specific application form is required.

(b) The application shall be accompanied by a nonrefundable filing fee of $25 and an advance rental payment of $1 per acre or fraction thereof for a new lease or at the rental rate set forth in the base lease for a modification made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20.

(c) The application shall:

(1) Make reference to the serial number of the lease if the land adjoin an existing Federal lease;

(2) Contain a complete and accurate description of the land desired;

(3) Include a showing that a hardrock mineral deposit extends from the applicant's adjoining lease or from private lands owned or controlled by the applicant; and

(4) Include proof of ownership or control of the mineral deposit in the adjoining lands if not under a Federal lease.

§ 3565.4 Surface management agency.

The surface management agency shall be consulted in accordance with § 3500.9 and Part 3580 of this title, as applicable. (See also § 3560.3)

§ 3565.5 Payment of bonus.

Prior to the issuance of a new lease or a modification of an existing lease, the applicant shall be required to pay a bonus in an amount determined by the authorized officer based on an appraisal. In no event shall such payment be less than $1 per acre or fraction thereof.

§ 3565.6 Terms and conditions of lease.

New leases shall be issued subject to the terms and conditions set out under Subpart 3561 of this title. The terms and conditions of a modified lease shall be the same as in the existing lease.

Subpart 3566—Lease Renewals

§ 3566.1 Applications.

An application for lease renewal shall be filed at least 90 days prior to the expiration of the lease term. No specific form is required. All applications shall be filed in triplicate in the proper BLM office together with a nonrefundable $25 filing fee and an advance rental payment of $1 per acre or fraction thereof. The rental payment shall not be less than $20.

§ 3566.2 Bonds.

Prior to the issuance of a renewal lease, the lessee may be required to furnish a new bond as prescribed by Subpart 3504 of this title.

§ 3566.3 Failure to apply for renewal.

If the holder of a lease fails to apply for renewal as provided in § 3566.1 of this title, the lease shall expire on the last day of the lease term.

§ 3566.4 Lease terms and conditions.

Each lease, if renewed, shall be issued on a form approved by the Director and shall be dated effective the first day of the month following its approval by the authorized officer or the first day of the month following the expiration of the current lease, whichever is later, and shall otherwise be subject to the terms and conditions set forth under Subpart 3561 of this title.

Subpart 3567—Development Contracts

§ 3567.1 Development contracts and processing and milling arrangements.

Development contracts and processing and milling arrangements by 1 or more lessees with 1 or more persons, associations or corporations to justify operations on a large scale for the discovery, development, production or transportation of ores may be approved by the authorized officer without regard to the acreage limitation set forth in §3560.4 of this title.

§ 3567.2 Acreage chargeability.

Leases and permits committed to an approved development contract or to a processing or milling arrangment shall not be included in computing accountable acreage.

§ 3567.3 Applications.

All applications shall be filed in triplicate in the proper BLM office. No specific form is required. An application shall include the following:

(a) Copies of the contract affecting the Federal leases and/or permits;

(b) A statement showing the nature and reasons for the requested contract;

(c) A statement showing all of the interests held in the contract area by the designated contractor; and

(d) The proposed or agreed upon plan of operation or development of the leased lands.

§ 3567.4 Approval.

Development contracts may be approved by the authorized officer when, in his/her judgment, conservation of natural resources or the public interest shall be best served thereby. The contract shall be signed and agreed upon by the parties prior to final approval by the Bureau.

PART 3570—ASPHALT IN OKLAHOMA

Subpart 3570—Asphalt in Oklahoma—General

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3570.0–3 Authority.
3570.1 Leasing procedures.
3570.2 Minerals and lands subject to leasing.
3570.3 Other applicable regulations.
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Subpart 3571—Lease Terms and Conditions

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3571.2 Rental and royalty.
3572.2–1 Rental.
3571.2–2 Production royalty.
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3571.4 Bonds.
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Subpart 3574—Competitive Leasing

3574.1 Lease by competitive bidding.
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Subpart 3575—Noncompetitive Leasing—Fringe Acreage Leases and Lease Modifications

3575.1 Lands subject to lease.
3575.2 Special requirements.
3575.3 Filing requirements.
3575.4 Surface management agency.
3575.5 Payment of bonus.
3575.6 Terms and conditions of lease.

Subpart 3576—Lease Renewals

3576.1 Applications.
3576.2 Bonds.
3576.3 Failure to apply for renewal.
3576.4 Least terms and conditions.

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); the Independent Offices Appropriations Act (31 U.S.C. 9701).

Subpart 3570—Asphalt in Oklahoma—General

§ 3570.0–3 Authority.

Authorities for leasing asphalt in Oklahoma are cited under § 3500.0–3(a) of this title.

§ 3570.1 Leasing procedures.

The regulations in this part provide the procedures for qualified applicants to obtain rights to develop deposits of asphalt on certain lands in Oklahoma. The regulations provide for this in the following manner:

(a) "Competitive leases" are issued for deposits of asphalt in Oklahoma without regard to the quantity or quality of the mineral deposit and allow the lessee to mine the deposit.

(b) "Fringe acreage leases" are issued noncompetitively for known deposits of asphalt in Oklahoma adjacent to existing mines on non-Federal lands which can be mined only as part of the existing mining operation.

(c) "Lease modifications" are used to add known deposits of asphalt in Oklahoma to an adjacent Federal lease which contains an existing mine, provided the deposits can only be mined as part of the existing mining operation.

§ 3570.2 Minerals and lands subject to leasing.

By the Act of June 28, 1944 (58 Stat. 463, 483–485), Congress authorized the Secretary to acquire certain lands and mineral deposits in Oklahoma and amended the Act to authorize leasing of the asphalt on those lands. The lands and mineral deposits covered by the 1944 law are those reserved from allotment in accordance with the provisions of section 58 of the Supplemental Agreement of 1902 (32 Stat. 654) with the Choctaw-Chickasaw Nation of Indians. Congress ratified the purchase contract in the Act of June 24, 1948 (62 Stat. 596), and appropriated funds for the purchase in the Act of May 24, 1949 (63 Stat. 76).

§ 3570.3 Other applicable regulations.

Part 3500 of this title contains the general regulations governing the leasing of solid minerals other than coal and oil shale and supplements, as applicable, the regulations in this part. The regulations in Part 3500 of this title include, but are not limited to, such matters as multiple mineral development, environmental review, other agency consent and consultation, and lands not available for leasing. Cross-reference to specific regulations in Part 3500 of this title is provided in this part as an aid to the reader and is not intended to limit the applicability of Part

3500 of this title only to the cross-eferenced regulations.

3570.4 Allowable acreage holdings.

No person, company, association or corporation may hold, at any one time, either directly or indirectly, leases exceeding in the aggregate 2,560 acres.

Subpart 3571—Lease Terms and Conditions

§ 3571.1 Applicability of lease terms and conditions.

Except as otherwise specifically stated, all lease terms and conditions set out under this section apply to all leases issued under Part 3570 of this title. Each lease shall be issued on a form approved by the Director and shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved. Each lease shall authorize in accordance with its terms and conditions the mining of asphalt.

§ 3571.2 Rental and royalty.

3571.2-1 § Rental.

(a) Each lease shall provide for the payment of rental annually and in advance for each acre or fraction thereof during the continuance of the lease at the rate of 25 cents per acre or fraction thereof for the first calendar year, 50 cents for the second, third, fourth and fifth calendar years, and $1 for each calendar year thereafter. Rental is payable annually on or before January 1. The rental paid for any year shall be credited against the first royalties as they accrue under the lease during the year for which rental was paid.

(b) If the annual rental is not timely remitted, the lessee shall be notified by the authorized officer that, unless payment is made within 30 days from receipt of such notification, action shall be taken to cancel the lease. (See § 3509.4-2).

(c) Remittances of rental shall be made in accordance with § 3503.1 of this title.

§ 3571.2-2 Production royalty.

All leases shall be conditioned upon the payment to the United States of such royalties as may be specified in the lease, which shall be fixed by the authorized officer in advance as provided under § 3503.2-1 of this title, but shall not be less than 25 cents per ton of 2,000 pounds of marketable production.

§ 3571.3 Duration of lease.

The lease shall be issued for an initial term of 20 years subject to a preferential right in the lessee to renew for a 10-year term at the end of the initial term and at the end of each 10-year period thereafter.

§ 3571.4 Bonds.

Prior to issuance of a lease, the applicant shall furnish a bond in an amount to be determined by the authorized officer, but not less than $5,000 (See Subpart 3504).

§ 3571.5 Special stipulations.

To insure adequate utilization and protection of the lands and their resources, leases shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title (See also Part 3580).

§ 3571.6 Other applicable regulations.

Leases issued under this part shall also be subject to the conditions set forth in other regulations, including, but not limited to, the following:

(a) Minimum annual production and minimum royalty are covered by § 3503.2-2 of this title;

(b) Suspension of operations and production and suspension of operations are covered by § 3503.3 of this title;

(c) Assignments and subleases are covered by Subpart 3506 of this title;

(d) Cancellation and relinquishment are covered by Subpart 3509 of this title;

(e) Exploration and mining are covered by Part 3590 of this title; and

(f) Royalty management is covered by 30 CFR Chapter II, Subchapter A.

Subpart 3574—Competitive Leasing

§ 3574.1 Lease by competitive bidding.

Leases may be offered competitively under this part without regard to the quantity or quality of the mineral deposit in the lands subject to the lease. A competitive lease sale may be initiated either through an expression of interest or on Bureau motion.

§ 3574.2 Surface management agency.

Prior to competitive lease offering, the surface management agency shall be consulted in accordance with § 3500.9 of this title, as applicable.

§ 3574.3 Sale procedures.

§ 3574.3-1 Publication and posting of notice.

Prior to a lease offering, the authorized officer shall publish a notice of lease sale for at least 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated. The notice of lease sale shall be posted for 30 days in the public room of the proper BLM office.

§ 3574.3-2 Contents of notice.

The lease sale notice shall include:

(a) The time and place of sale;

(b) The bidding method;

(c) A description of the tract being offered;

(d) A description of the deposit being offered;

(e) The minimum bid to be considered; and

(f) Information on where a detailed statement of the terms and conditions of the lease sale and of the proposed lease may be obtained.

§ 3574.3-3 Detailed statement.

The authorized officer shall also prepare and make available a detailed statement of sale containing:

(a) The proposed lease on a form approved by the Director with terms and conditions, including the rental, royalty rates, bond amount, and special stipulations;

(b) An explanation of the manner in which bids may be submitted;

(c) A notice that each bid shall be accompanied by the bidder's qualifications (See Part 3502) and one-fifth of the amount bid;

(d) A notice that the successful bidder(s) shall be required, prior to lease issuance, to pay its proportionate share of the total cost of the publication of the sale notice;

(e) A warning to all bidders concerning 18 U.S.C. 1860 which prohibits unlawful combination or intimidation of bidders;

(f) A statement that the Secretary reserves the right to reject any and all bids, and the right to offer the lease to the next qualified bidder in the successful bidder fails to obtain the lease for any reason; and,

(g) Any other information deemed appropriate.

§ 3574.4 Bid opening.

All bids shall be opened and announced at the time and date specified in the notice of lease sale, but no bids shall be accepted or rejected at that time. Bids received after the time specified in the notice of sale shall not be considered. A bid may be withdrawn or modified prior to the time specified in the notice of sale.

§ 3574.5 Award of lease.

After the authorized officer has determined that the highest qualified bid meets or exceeds fair market value,

copies of the proposed lease attached to the detailed statement shall be sent to the successful bidder who shall, within a specified time, sign and return the lease form, pay the balance of the bonus bid, pay the first year's rental, pay the publication costs and furnish the required lease bond.

§ 3574.6 Rejection of bid.

(a) If the high bid is rejected for failure of the successful bidder to sign the lease form and pay the balance of the bonus bid, or otherwise comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited to the United States.

(b) If the lease cannot be awarded for reasons determined by the authorized officer to be beyond the control of the successful bidder, the authorized officer shall reject the bid and the deposit submitted with the bid shall be returned.

Subpart 3575—Noncompetitive Leasing—Fringe Acreage Leases and Lease Modifications

§ 3575.1 Lands subject to lease.

Lands available for leasing which are known to contain a deposit of asphalt that extends from an adjoining Federal lease or from privately held lands may be leased noncompetitively either by issuance of a new lease for these lands or by adding such lands to an existing Federal lease.

§ 3575.2 Special requirements.

Before a fringe acreage lease may be issued or a lease modified under this subpart, the authorized officer shall determine the following:

(a) The lands are contiguous to an existing Federal lease or to non-Federal lands owned or controlled by the applicant;

(b)(1) The new lease for the fringe acreage is not in excess of 640 acres; or

(2) The acreage of the modified lease, including additional lands, is not in excess of 640 acres;

(c) The mineral deposit is not in an area of competitive interest to holders of other active mining units in the area;

(d) The lands applied for lack sufficient reserves of the mineral resource to warrant independent development; and

(e) Leasing the lands will result in conservation of natural resources and will provide for economical and efficient recovery as part of a mining unit.

§ 3575.3 Filing requirements.

(a) An application shall be filed in triplicate with the proper BLM office. No specific application form is required.

(b) The application shall be accompanied by a nonrefundable filing fee of $25, and an advance rental payment of 25 cents per acre or fraction thereof for a new lease or at the rental rate set forth in the base lease for a modification made payable to the Department of the Interior—Bureau of Land Management.

(c) The application shall:

(1) Make reference to the serial number of the lease if the lands adjoin an existing Federal lease;

(2) Contain a complete and accurate description of the lands desired;

(3) Include a showing that an asphalt deposit extends from the applicant's adjoining lease or from private lands owned or controlled by the applicant; and

(4) Include proof of ownership or control of the mineral deposit in the adjoining lands if not under a Federal lease.

§ 3575.4 Surface management agency.

The surface management agency, if other than the Bureau, shall be consulted in accordance with § 3500.9 of this title, as applicable.

§ 3575.5 Payment of bonus.

Prior to the issuance of a new lease or a modification of an existing lease, the applicant shall be required to pay a bonus in an amount determined by the authorized officer based on an appraisal. In no event, shall such payment be less than $1 per acre or fraction thereof.

§ 3575.6 Terms and conditions of lease.

New leases shall be issued subject to the terms and conditions set out under subpart 3571 of this title. The terms and conditions of modified leases shall be the same as in the existing leases.

Subpart 3576—Lease Renewals

§ 3576.1 Applications.

An application for lease renewal shall be filed at least 90 days prior to the expiration of the lease term. There is no specific form required. All applications shall be filed in triplicate in the proper BLM office together with a nonrefundable filing fee of $25 and an advance rental payment of $1 per acre or fraction thereof.

§ 3576.2 Bonds.

Prior to the issuance of a renewal lease, the lessee may be required to furnish a new bond as prescribed by Subpart 3504 of this title.

§ 3576.3 Failure to apply for renewal.

If the holder of a lease fails to apply for renewal timely, the lease shall expire on the last day of the lease term.

§ 3576.4 Lease terms and conditions.

Each renewal lease shall be issued on a form approved by the Director and shall be effective the first day of the month following its approval by the authorized officer or the first day of the month following the expiration of the current lease, whichever is later, and shall otherwise be subject to the terms and conditions set forth under Subpart 3571 of this title.

PART 3580—SPECIAL LEASING AREAS

Subpart 3581—Gold, Silver or Quicksilver in Confirmed Private Land Grants

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3581.2 Who may obtain a lease.
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3581.4–1 Lease terms.
3581.4–2 Rate of royalty; investment determined.
3581.4–3 Lease form and execution.
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Subpart 3582—National Park Service Areas

3582.0–3 Authority.
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3582.1–1 Leasable minerals.
3582.1–2 Hardrock minerals.
3582.2 Lands to which applicable.
3582.2–1 Boundary maps.
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Subpart 3583—Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area

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3583.1–1 Leasable minerals.
3583.1–2 Hardrock minerals.
3583.2 Consent of Secretary of Agriculture.
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3583.4 Hardrock mineral leases.
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3583.4–3 Special terms and conditions.
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3584.3 Other applicable regulations.
3584.4 Notice of application.
3584.5 Protection of surface.
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Subpart 3585—White Mountains National Recreation Area—Alaska

3585.0–3 Authority.
3585.1 Lands to which applicable.
3585.2 Other applicable regulations.

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3585.2–1 Leasable minerals.
3585.2–2 Hardrock minerals.
3585.3 Mining claimant preference right leases.
3585.3–1 Who may obtain a mining claimant preference right lease.
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3585.4 Leases.
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3585.5–1 Exploration license.
3585.5–2 Other applicable regulations.
3585.5–3 Exploration plan.
3585.5–4 Notice of exploration.
3585.5–5 Contents of notice.
3585.5–6 Publication and posting of notice.
3585.5–7 Notice of participation.
3585.5–8 Decision on plan and participation.
3585.5–9 Submission of data.

Subpart 3586—Sand and Gravel in Nevada

3586.1 Sand and gravel.
3586.1–1 Applicable law and regulations.
3586.1–2 Existing leases.
3586.1–3 Transfers of lease.

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); the Act of June 8, 1926 (30 U.S.C. 291–293); the Act of March 3, 1933, as amended (47 Stat. 1487); Section 10 of the Act of August 4, 1939 (43 U.S.C. 387); the Act of October 8, 1964 (16 U.S.C. 460n et seq.); the Act of November 8, 1965 (16 U.S.C. 460q et seq.); the Act of October 2, 1968 (16 U.S.C. 90c et seq.), the Act of October 27, 1972 (16 U.S.C. 460dd et seq.); the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm–2—460mm–4); the Independent Offices Appropriations Act (31 U.S.C. 9701).

Subpart 3581—Gold, Silver, or Quicksilver in Confirmed Private Land Grants

§ 3581.0–3 Authority.

Authority for leasing gold, silver, or quicksilver in confirmed private land grants is shown in § 3500.0–3(c)(1) of this title.

§ 3581.1 Lands to which applicable.

The regulations in this subpart apply to lands in private land claims patented pursuant to decrees of the Court of Private Land Claims where the grant did not convey the rights to deposits of gold, silver and quicksilver and where the grantee has not otherwise become entitled in law or in equity to the deposits.

§ 3581.2 Who may obtain a lease.

Applications shall only be filed by, and leases issued to, the owner of the lands under the confirmed land grant; that is, the original grantee or his/her record transferee or successor in title.

§ 3581.3 Application for lease.

(a) Applications for leases shall be filed in triplicate in the proper BLM office and may include all or any part of the grant for which the applicant holds title on the date of the application. No specific form is required.

(b) Applications shall set forth the name and address of the applicant, describe the lands in which the deposits occur by legal subdivision of the public surveys, if so surveyed, otherwise by metes and bounds; or if for the entire area in the grant, the name of the grant, area and date of patent shall suffice. The mineral deposits also shall be fully described, giving character, mode of occurrence, nature of the formation, kind and character of associated minerals, if any, proposed mining methods, estimate of amount of investment necessary for successful operation of the mine(s) contemplated, estimated amount of production of gold, silver and quicksilver, or any of them, and such other pertinent information as the applicant may desire to set forth, including what he/she considers a reasonable royalty rate under the lease.

(c) The applicant also shall file with his/her application a duly authenticated abstract of title showing present ownership of the lands or a certificate of the county recorder of deeds that the record title stands in the applicant's name.

§ 3581.4 Leases.

§ 3581.4–1 Lease terms.

The lease shall be issued for a period of 20 years with a preference right in the lease to renew for a 10-year term at the end of the initial term and at the end of each 10-year period thereafter.

§ 3581.4–2 Rate of royalty; investment determined.

If the authorized officer finds the application sufficient to authorize the issuance of a lease, he/she shall establish a rate of royalty of not less than 5 percent or more than 12½ percent of the value of the output of gold, silver or quicksilver at the mine and also shall establish the amount of investment required under the lease.

§ 3581.4–3 Lease form and execution.

A lease on a form approved by the Director shall be furnished to the applicant, who shall be allowed 30 days from notice within which to execute and return the lease to the proper BLM office and to furnish the required bond.

§ 3581.5 Bond.

Prior to lease issuance, the lessee shall furnish a bond of not less than $2,000 conditioned upon compliance with all terms and conditions of the lease, including the prescribed investment requirement. The authorized officer reserves the right to increase the bond amount.

Subpart 3582—National Park Service Areas

§ 3582.0–3 Authority.

Authority for leasing mineral deposits within certain national recreation areas administered by the National Park Service is found in § 3500.0–3(c)(3) of this title.

§ 3582.1 Other applicable regulations.

§ 3582.1–1 Leasable minerals.

Except as otherwise specifically provided in this subpart, leasing of deposits of leasable minerals shall be governed by regulations in Parts 3500, 3510, 3520, 3530, 3540 and 3550 of this title.

§ 3582.1–2 Hardrock minerals.

Except as otherwise specifically provided in this subpart, leasing of deposits of hardrock minerals shall be governed by regulations in Parts 3500 and 3560 of this title.

§ 3582.2 Lands to which applicable.

§ 3582.2–1 Boundary maps.

The areas subject to the regulations in this subpart are those areas of lands and water which are shown on the following maps on file and available for public inspection in the Office of the Director of the National Park Service and in the Superintendent's office of each area. The boundaries of these areas may be revised by the Secretary as authorized in the Acts cited under § 3500.0–3(c)(3) of this title.

(a) Lake Mead National Recreation Area—the map identified as "boundary map 8360—80013A, revised December 1979."

(b) Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area—the map identified as "Proposed Whiskeytown-Shasta-Trinity National Recreation Area," numbered BOR–WEST 1004, dated July 1963.

(c) Ross Lake and Lake Chelan National Recreation Areas—the map identified as "Proposed Management Units. North Cascades, Washington," numbered MP–CAS—7002, dated October 1967.

(d) Glen Canyon National Recreation Area—the map identified as "Boundary Map Glen Canyon National Recreation Area," numbered GLC—91,006, dated August 1972.

§ 3582.2-2 Excepted areas.

The following areas shall not be opened to mineral leasing:

(a) Lake Mead National Recreation Area.

(1) All waters of Lakes Mead and Mohave and all lands within 300 feet of those lakes measured horizontally from the shoreline at maximum water surface elevations.

(2) All lands within the area of supervision of the Bureau of Reclamation around Hoover and Davis Dams and all lands within any developed and/or concentrated public use area or other area of outstanding recreational significance as designated by the Superintendent on the map (NRA–L.M. 2291A, dated July 1966) of Lake Mead National Recreation Area which is available for inspection in the Office of the Superintendent.

(b) Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area.

(1) All waters of Whiskeytown Lake an all lands within 1 mile of that lake measured from the shoreline at maximum surface elevation.

(2) All lands classified as high density recreation, general outdoor recreation, outstanding natural and historic, as shown on the map numbered 611–20, 004B, dated April 1976 entitled "Land Classification, Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area." This map is available for public inspection in the Office of the Superintendent.

(3) All lands within section 34 of Township 33 north, Range 7 west, Mt. Diablo Meridian.

(c) Ross Lake and Lake Chelan National Recreation Areas.

(1) All of Lake Chelan National Recreation Area.

(2) All lands within one-half mile of Gorge, Diablo and Ross Lakes measured from the shoreline at maximum surface elevation.

(3) All lands proposed for or designated as wilderness.

(4) All lands within one-half mile of State Highway 20.

(5) Pyramid Lake Research Natural Area and all lands within one-half mile of its boundaries.

(d) Glen Canyon National Recreation Area.

Those areas closed to mineral disposition within the natural zone, development zone, cultural zone and portions of the recreation and resource utilization zone as shown on the map numbered 80,002A, dated March 1980, entitled "Mineral Management Plan—Glen Canyon National Recreation Area." This map is available for public inspection in the Office of the Superintendent and the Office of the State Directors, Bureau of Land Management, Arizona and Utah.

§ 3582.3 Consent and consultation.

Any mineral lease or permit shall be issued or renewed only with the consent of the Regional Director, National Park Service. Such consent shall be granted only upon a determination by the Regional Director that the activity permitted under the lease or permit shall not have significant adverse effect upon the resources or administration of the area pursuant to the authorizing legislation for the area. Any lease or permit issued shall be subject to such conditions as may be prescribed by the Regional Director to protect the surface and significant resources of the area, to preserve their use for public recreation and subject to the condition that site specific approval of any activity on the leasse or permit shall be given only upon a concurrence by the Regional Director. All lease applications for reclamation withdrawn lands also shall be submitted to the Bureau of Reclamation for review.

Subpart 3583—Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area

§ 3583.0–3 Authority.

Authority for leasing mineral deposits within the Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area administered by the Forest Service is cited in § 3500.0–3(c)(4) of this title.

§ 3583.1 Other applicable regulations.

§ 3583.1-1 Leasable minerals.

Except as otherwise specifically provided in this subpart, leasing of deposits of leasable minerals shall be governed by regulations in Parts 3500, 3510, 3520, 3530, 3540 and 3550 of this title.

§ 3583.1-2 Hardrock minerals.

This subpart governs the leasing of hardrock minerals in the Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area. The terms and conditions of hardrock leases issued under this subpart shall be the same as those set out for hardrock leases in subpart 3561 of this title, except as specifically modified in this subpart.

§ 3583.2 Consent of Secretary of Agriculture.

Any mineral lease for lands subject to this subpart shall be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he/she may prescribe after he/she finds that such disposition would not have significant adverse effects on the purpose of the Central Valley Project or the administration of the recreation area.

§ 3583.3 Applications for hardrock mineral leases.

No specific form is required. An application shall include the applicant's name and address, a statement of holdings in accordance with Subpart 3502 of this title, a description of the lands in accordance with Subpart 3501 of this title, and the name of the mineral for which the lease is desired. The applicant shall state whether the mineral applied for can be developed in paying quantities, stating the reasons therefor, and shall furnish such facts as are available to him/her respecting the known occurrence of the mineral, the character of such occurrence and its probable value as evidencing the existence of a workable deposit of such mineral. Each application shall be filed in triplicate in the proper BLM office and shall be accompanied by a nonrefundable filing fee of $25.

§ 3583.4 Hardrock mineral leases.

§ 3583.4-1 Leasing units.

Leasing units may not exceed 640 acres consisting, if the lands are surveyed, of legal subdivisions in reasonably compact form or, if the lands are not surveyed, of a square or rectangular area with north and south and east and west boundaries so as to approximate legal subdivisions, described by metes and bounds and connected to a corner of the public survey by courses and distances. The authorized officer may prescribe a lesser area for any mineral deposit if such lesser area is adequate for an economic mining operation.

§ 3583.4-2 Royalties, rentals and minimum royalties.

Rentals and royalties shall be determined by the authorized officer on the basis of the fair market value, but in no event shall be less than:

(a) A rental of 50 cents per acre or fraction thereof payable in advance until production is obtained.

(b) A minimum royalty of $1 per acre or fraction thereof payable in advance after production is obtained.

(c) A production royalty of 2 percent of the amount or value of the minerals mined, the exact amount of royalty to be fixed prior to the issuance of the lease.

§ 3583.4–3 Special terms and conditions.

Each lease shall contain provisions for the following:

(a) Diligent development of the leased property, except when operations are interrupted by strikes, the elements or casualties not attributable to the lessee, unless operations are suspended upon a showing that the lease cannot be operated except at loss because of unfavorable market conditions;

(b) Occupation and use of the surface shall be restricted to that which is reasonably necessary for the exploration, development and extraction of the leased minerals, subject to any special rules to protect the values of the recreation area;

(c) No vegetation shall be destroyed or disturbed except where necessary to mine and remove the minerals;

(d) Operations shall not be conducted in such a manner as to adversely affect the purpose of the Central Valley Project through dumping, drainage or otherwise;

(e) Structures shall not be erected or roads or vehicle trails opened or constructed without first obtaining written permission from an authorized officer or employee of the Forest Service. The permit for a road or trail may be conditioned upon the permittee's maintaining the road or trail in passable condition satisfactory to the officer in charge of the area so long as it is used by the permittee or his/her successor;

(f) Reservation of the right to add additional terms to the lease when deemed necessary by the authorized officer or employee of the Forest Service for the protection of the surface, its resources and use for recreation.

§ 3583.4–4 Duration of lease.

Leases shall be issued for period of 5 years. Any lease in good standing, upon which production in paying quantities has been obtained, shall be subject to renewal for successive 5 year terms on such reasonable terms as may be prescribed by the Secretary. An application for renewal shall be filed in triplicate in the proper BLM office at least 90 days prior to the expiration of the current lease term unless the lands included in the lease have been withdrawn at the expiration of such term.

§ 3583.4–5 Lease by competitive bidding.

Leases may be offered competitively for any lands applied for under this subpart without regard to the quantity or quality of the mineral deposit that may be present therein.

§ 3583.5 Disposal of materials.

Materials within the public lands covered by regulations in this subpart which are not subject to the provisions of §§ 3583.1–1 and 3583.1–2 of this title shall be subject to disposal under the Material Act of 1947, as amended (30 U.S.C. 601 et seq.), subject to the conditions and limitations on occupancy and operations prescribed for leases in this subpart.

Subpart 3584—Reserved Minerals in Lands Patented to the State of California for Park or Other Public Purposes

§ 3584.0–3 Authority.

Authority for leasing reserved minerals in certain lands patented to the State of California for park or other purposes is cited under § 3500.0–3(c)(2) of this title.

§ 3584.1 Lands to which applicable.

The regulations in this subpart apply to certain lands patented to the State of California for park and other public purposes.

§ 3584.2 Minerals to be leased.

Leasable and hardrock minerals are subject to lease under this subpart.

3584.3 Other applicable regulations.

Subject to regulations in this subpart, the regulations in Parts 3500, 3510, 3520, 3530, 3540, 3550 and 3560 of this title shall govern the leasing of all leasable and hardrock minerals within this area.

§ 3584.4 Notice of application.

The authorized officer shall notify the surface owner of each application received. Notice of any proposed competitive lease sale shall be given to the surface owner prior to publication of notice of sale. Should the surface owner object to leasing of any tract for reasons determined by the authorized officer to be satisfactory, the application shall be rejected and the lands shall not be offered for lease sale.

§ 3584.5 Protection of surface.

All leases issued pursuant to this subpart shall be conditioned upon compliance by the lessee with all the laws, rules and regulations of the State of California for the safeguarding and protection of plant life, scenic features and park or recreational improvements on the lands, where not inconsistent with the terms of the lease or this section. The lease also shall provide that any mining work performed upon the lease shall be located in accordance with any requirements of the State necessary for the protection of the surface rights and uses and so conducted as to result in the least possible injury to plant life, scenic features and improvements and that, upon completion of the mining operation, all excavations, including wells, shall be closed and the property shall be conditioned for abandonment to the satisfaction of the surface owner. The lease shall further provide that any use of the lands for ingress to and egress from the mine shall be on a route approved in writing by the State's authorized representative.

§ 3584.6 Terms of lease.

Leases for hardrock minerals shall issue for a period of 5 years with a preference in the lessee for renewal for a term of 5 years at the end of the initial term and at the end of each 5 year period thereafter (See Subpart 3566).

Subpart 3585—White Mountains National Recreation Area—Alaska

§ 3585.0–3 Authority.

(a) Authority for leasing minerals in the White Mountains National Recreation Area—Alaska is found in § 3500.0–3(c)(5) of this title.

(b) Authority for approving exploration licenses is section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)).

§ 3585.1 Lands to which applicable.

The lands subject to the regulations in this subpart are within the White Mountains National Recreation Area—Alaska which have been opened to mineral leasing and development pursuant to the findings in the land use plan for the area that such use and development would be compatible with, or would not significantly impair, public recreation and conservation of the scenic, scientific, historic, fish and wildlife or other values contributing to public enjoyment. The land use plan is on file and available for public inspection in the Bureau's Fairbanks District Office.

§ 3585.2 Other applicable regulations.

§ 3585.2–1 Leasable minerals.

Leasing of deposits of leasable minerals shall be governed by the applicable regulations in Parts 3500, 3510, 3520, 3530, 3540 and 3550 of this title.

§ 3585.2–2 Hardrock minerals.

Expect as otherwise specifically provided in §§ 3585.3 and 3585.4 of this

title for mining claimant preference right leases, the regulations in Parts 3500 and 3560 of this title shall govern the leasing of hardrock minerals.

§ 3585.3 Mining claimant preference right leases.

§ 3585.3-1 Who may obtain a mining claimant preference right lease.

Where, consistent with the land use plan, the Secretary has opened the area to mineral leasing and development, the holder of an unperfected mining claim within the White Mountains National Recreation Area—Alaska which was, prior to November 16, 1978, located, recorded and maintained in accordance with applicable Federal and State laws on lands located within the recreation area is entitled to a lease for the removal of the hardrock minerals from the mining claim(s), provided such mining claimant submits a timely application.

§ 3585.3-2 Application.

(a) An application for a mining claimant preference right lease shall be filed in triplicate in the Fairbanks District Office, Bureau of Land Management, P.O. Box 1150, Fairbanks, Alaska 99707, by the holder of an unperfected mining claim(s), within 2 years from the date the lands are opened to mineral leasing and development.

(b) No specific form is required.

(c) Each application shall be signed in ink by the applicant and shall include the following:

(1) The applicant's name and address;

(2) The serial number for each claim for which the application is made;

(3) The name of the mineral(s) for which the lease is sought; and

(4) A separate map on which the claim(s) is clearly marked.

(d) A single application may embrace any number of unperfected mining claims provided that, in the aggregate, the claims do not exceed 640 acres. The claims shall be contiguous and shall be located entirely within an area 6 miles square. Multiple applications may be submitted.

§ 3585.4 Leases.

§ 3585.4-1 Survey for leasing.

Prior to the issuance of a lease under their subpart, the applicant, at his/her own expense, shall be required to have a correct survey made under authority of a cadastral engineer, such survey to show the exterior surface boundaries of the entire lease tract, not each individual mining claim where more than one claim is involved, which boundaries are to be distinctly marked by monuments on the ground. Application for authorization of survey shall be made in accordance with Subpart 1821 of this title.

§ 3585.4-2 Terms and conditions.

Leases shall be issued on a form approved by the Director and under such terms and conditions as prescribed in the lease form and Subpart 3561 of this title. Where deemed necessary by the authorized officer, special lease stipulations also shall be included for the protection of the surface, its resources and use for recreation.

§ 3585.4-3 Relinquishment of claims.

Prior to the issuance of a lease, the applicant shall relinquish in writing any right or interest in his/her mining claim(s) as of the date the lease covering such claim(s) becomes effective.

§ 3585.5 Exploration license.

§ 3585.5-1 Exploration license.

Private parties, jointly or severally, may apply for exploration licenses to explore known hardrock mineral deposits which are not under lease or within an area subject to application and lease under § 3585.3 of this title to obtain geologic, environmental and other pertinent data concerning such deposits. Exploration licenses do not grant the licensee any preference right to a lease.

§ 3585.5-2 Other applicable regulations.

Except as otherwise specifically provided in this subpart, the regulations pertaining to land use authorizations under Part 2920 of this title shall govern the issuance of exploration licenses.

§ 3585.5-3 Exploration plan.

All applications for exploration licenses shall include an exploration plan which is in full compliance with § 3562.3-3 of this title. The approved exploration plan shall be attached to, and made a part of, the license.

§ 3585.5-4 Notice of exploration.

Applicants for exploration licenses shall publish a Notice of Exploration inviting other parties to participate in exploration under license on a pro rata cost sharing basis.

§ 3585.5-5 Contents of notice.

The Notice of Exploration prepared by the authorized officer and furnished to the applicant shall contain:

(a) The name and address of the applicant;

(b) A description of the lands;

(c) The address of the Bureau office where the exploration plan will be available for inspection; and

(d) An invitation to the public to participate in the exploration under the license.

§ 3585.5-6 Publication and posting of notice.

(a) The applicant shall publish the Notice of Exploration once a week for 3 consecutive weeks in at least 1 newspaper of general circulation nearest the area where the lands are located.

(b) The authorized officer shall post the notice in the Bureau's Alaska State Office and in the Fairbanks District Office for 30 days.

§ 3585.5-7 Notice of participation.

Any person who seeks to participate in the exploration program shall notify the authorized officer and the applicant in writing within 30 days after posting of the Notice of Exploration.

§ 3585.5-8 Decision on plan and participation.

(a) The authorized officer may issue the exploration license naming participants and acreage covered, establishing core hole spacing and resolving any other issue necessary to minimize surface disturbance and inconsistencies between the exploration plan.

(b) Upon application by the participants, a modification of the exploration plan may be approved by the authorized officer.

§ 3585.5-9 Submission of data.

The licensee shall furnish the authorized officer with copies of all data obtained during exploration. All data shall be considered confidential and not made public until the areas have been leased or until the authorized officer determines that public access to the data is not exempt from disclosure under the Freedom of Information Act, whichever occurs first.

Subpart 3586—Sand and Gravel in Nevada

§ 3586.1 Applicable laws and regulations.

The Act of June 8, 1926 (44 Stat. 708), authorizes the Secretary to dispose of the reserved minerals in certain lands patented to the State of Nevada under such conditions and under such rules and regulations as he/she may prescribe. Mineral materials, including deposits of sand and gravel, in such lands shall, except for leases granted and renewed under this subpart, be subject to disposal only under the regulations in group 3600 of this title which implement the Materials Act of 1947, as amended (30 U.S.C. 601 et seq.).

§ 3586.2 Existing leases.

Existing sand and gravel leases may be renewed at the expiration of their initial term, and at the end of each successive 5-year period thereafter, for an additional term of 5 years, under such terms and conditions as the authorized officer determines to be reasonable. An application for renewal shall be filed in triplicate in the proper BLM office within 90 days prior to the expiration of the lease term and be accompanied by a nonrefundable filing fee of $25. Prior to renewal of a lease, the lessee shall be required to file a new bond and remit advance rental for the first year of the renewal lease at the rate prescribed by the authorized officer. The rental payment shall not be less than $20. The lease shall be renewed only upon application of the lessee of record. The authorized officer shall not renew any lease that is not producing sand and gravel or is not part of an existing sand and gravel mining operation.

§ 3586.3 Transfers of lease.

Leases may be transferred in whole or in part. The regulations in Subpart 3506 of this title shall govern all such transfers.

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DEPARTMENT OF THE INTERIOR
Bureau of Land Management

43 CFR Part 8560

[Circular No. 2581]

Designated Wilderness Areas; Procedures for Management; Amendment Providing a Review Process for Mining Plans of Operation

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) and the Wilderness Act of 1964 (16 U.S.C. 1131), Group 8500, Subchaper H, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

GROUP 8500—WILDERNESS MANAGEMENT

PART 8560—WILDERNESS AREAS

1. The authority citation for Part 8560 continues to read as follows:

Authority: 43 U.S.C. 1701 et seq., 16 U.S.C. 1131 et seq.

2. Section 8560.4–6 is amended by adding paragraph (j) to read as follows:

§ 8560.4–6 Mining law administration.

* * * * *

(j) Where there exists no current approved mineral examination report concluding that unpatented mining claims are valid, prior to approving plans of operations or allowing previously approved operations to continue on unpatented mining claims after the date on which the lands were withdrawn from appropriation under the mining laws, the authorized officer shall cause a mineral examination of the unpatented mining claim to be conducted by a Bureau of Land Management mineral examiner to determine whether or not the claim was valid prior to the withdrawal and remains valid. If the approved mineral examination report concludes that the claim lacks a discovery of a valuable mineral deposit, or is invalid for any other reason, the authorized officer shall either deny the plan of operation or, in the case of an existing approved operation, issue a notice ordering the cessation of operations and shall promptly initiate contest proceedings to determine the status of the claim conclusively. However, neither the adverse conclusions of an approved mineral examination report nor the pendency of contest proceedings shall constitute grounds to disallow a plan of operations to the extent the plan proposes operations that will cause only insignificant surface disturbance and are for the purpose of: (1) Taking samples or gathering other evidence of claim validity to confirm and corroborate mineral exposures which are physically disclosed and existing on the claim prior to the withdrawal date, or (2) performing the minimum necessary annual assessment work as required by subsection 3851.1 of this title. Surface disturbance exceeding the insignificant level is permissible only when it is the minimum disturbance necessary to remove mineral samples to confirm and corroborate preexisting exposures of a valuable mineral deposit discovered prior to the withdrawal. The requirement in this subsection for a mineral examination shall not cause a suspension of the time limitations governing approval of operating plans contained in subsection 3809.1–6 of this title. Once a final administrative decision is rendered declaring a claim to be null and void, all operations, except required reclamation work, shall be disallowed and shall cease unless and until such decision is reversed in a judicial review action.

Dated: April 11, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 86–9448 Filed 4–28–86; 8:45 am]

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#2581

PARTMENT OF THE INTERIOR
eau of Land Management

43 CFR Part 8560

[Circular No. 2581]

Designated Wilderness Areas; Procedures for Management; Amendment Providing a Review Process for Mining Plans of Operation

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking establishes procedures for reviewing plans of operations and continuing operations on unpatented mining claims within designated wilderness areas administered by the Bureau of Land Management. The final rulemaking is based on the Bureau's Wilderness Management Policy, published in the Federal Register on September 24, 1981 (46 FR 47180).

EFFECTIVE DATE: May 29, 1986.

ADDRESS: Inquiries or suggestions should be sent to: Director (340), Bureau of Land Management, Room 2661, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: David E. Porter, (202) 343-6064.

PLEMENTARY INFORMATION: On ruary 25, 1985, the Department of the Interior published in the Federal Register (50 FR 5504) a final rulemaking providing procedures for the administration of wilderness areas on public lands under the jurisdiction of the Bureau of Land Management. By a notice published in the Federal Register on March 27, 1985 (50 FR 12020), the Department of the Interior withdrew section 8560.4-6(j) of that final rulemaking, which stated the requirements for approving plans of operations for unpatented mining claims existing before the date on which the wilderness areas were withdrawn from appropriation under the mining laws. Except for that provision, the final rulemaking for 43 CFR Part 8560 went into effect on March 27, 1985.

A proposed rulemaking establishing requirements to be met before the authorized officer of the Bureau of Land Management (BLM) can approve a plan of operations for a mining claim or allow previously approved operations to continue was published in the Federal Register on August 6, 1985 (50 FR 31734). Comments were invited for a period of 30 days ending September 5, 1985, ng which period a total of 14 nents were received, with 4 from associations, 2 from business establishments, 4 from individuals, and 4 from Federal agency offices or personnel. All of the comments have been given careful consideration during the decisionmaking process on this final rulemaking.

Several of the comments addressed the proposed rulemaking in general terms, opposing mining in designated wilderness areas, opposing restrictions on mining in wilderness, or opposing regulations alleged to impair the property interests of miners in mining claims. Others criticized the single paragraph of the proposed rulemaking in detail; these will be analyzed in the same manner in this Supplementary Information.

One comment requested clarification of the first sentence of paragraph (j), pointing out that the final phrase "at the time operations are proposed" appears inconsistent as a condition for "allowing previously approved operations to continue." To resolve this inconsistency, the final phrase, which is unnecessary and confusing, has been removed in the final rulemaking.

Minor amendments were made in the final rulemaking in response to comments. The following paragraphs discuss all of the comments submitted and explain why they did or did not result in any change in the language of the final regulation.

One comment urged that there be public participation in the review of plans of operation in wilderness areas. The Bureau of Land Management notifies affected and interested members of the public when plans of operations are submitted for mining claims in wilderness areas. This practice is required by the operating instructions of the Bureau. Such internal procedures are not proper matters for regulations.

One comment stated that the proposed regulation is too inflexible and would provoke continuing controversy. The comment stated that the Federal Land Policy and Management Act of 1976 (FLPMA) affords sufficient authority to assure reclamation of mined out areas, that plans not meeting reclamation requirements can be disapproved, and that section 8560.4-6(j)(2) requires a mineral examination to be carried out if wilderness values might be impaired. The comment misinterpreted section 8560.4-6(j)(2), which allows performance of annual assessment work under a plan of operations pending the contest outcome even if the mineral examination report concludes that the claim is invalid. Reclamation under FLPMA or any other authority is not directed to preserving wilderness character, but rather to restoring it. The existence of a reclamation requirement does not eliminate the need to protect the wilderness character of the land to the maximum extent possible, at all stages before reclamation, consistent with protecting the legal rights of the miner. The Wilderness Act requires preservation of the wilderness character of lands in the wilderness preservation system, and allows mining only on valid claims existing at the time the area was withdrawn from the operation of the mining law.

Another comment opposed the provision allowing the miner to gather evidence of claim validity or perform assessment work, even if only insignificant surface disturbance would be caused. While the miner may not prospect for a discovery, claims must be properly located and recorded, and contain a discovery of a valuable mineral deposit. Collecting samples may be the only way to confirm a discovery,—if samples from the time before designation of the land as wilderness are not available or cannot be demonstrated to be from the claim being examined. If sample collection were to be prohibited by the regulation, the miner would be presented with the untenable situation of having no way to prove that samples collected before a wilderness was designated are from that wilderness area, and no ability to collect them afterward. This legal principle has been consistently adhered to by the Department in cases involving both executive and legislative withdrawals made subject to valid existing rights. See *United States v. Harlan H. Foresyth*, 15 IBLA 43 (1974) and *United States v. Chappell*, 42 IBLA 74 (1979).

One comment stated that it is inconsistent with the Wilderness Act to allow significant surface disturbance if that is the minimum disturbance necessary to remove mineral samples to confirm valuable mineral exposures, and that wilderness values may not be degraded except on claims already determined to have valid rights. A claim can be valid in fact without having been administratively determined to be valid, and, as mentioned above, the Department has consistently recognized that the holder of a claim has the right to establish the validity of his discovery. Under some circumstances, surface disturbance exceeding the insignificant level may be necessary to collect such evidence, but the regulation requires the disturbance to be minimized. On the other hand, the miner does not have the right to prospect to make a discovery.

One comment urged that the miner be allowed the opportunity to assess his discovery, so that an informed decision can be made as to whether the mineral

discovery is of greater relative value to the public than preserving the land as wilderness. Section 8560.4–6(j) does not prohibit gatherinig samples as evidence of discovery; it specifically permits it. Decisions are not made by comparing the value of the mineral with the value of the wilderness area, but on the basis of whether the miner has an established right based on a valid mining claim.

One comment pointed out that exploration can be carried out with very little surface disturbance, using helicopters, tunnels, and so forth, and that the rulemaking should allow mineral deposits to be assessed individually. It concluded that the rulemaking would make assessment work impossible. The law and this rulemaking specifically permit annual assessment work and gathering samples to provide evidence of claim validity. If such work is done with the minimal surface disturbance described in the comment, the miner may be able to demonstrate that any surface disturbance he might cause would be insignificant, and his plan of operations that proposes use of helicopters or tunnels may be approved for purposes of doing assessment work and gathering evidence of claim validity. Use of helicopters under this subpart requires a plan of operations.

One comment objected to the provision allowing operations on producing mines to continue pending determination of claim validity. This exemption was created because producing mines were presumed to be economically producing, and therefore to meet the prudent man test. Although it might seem to impair the property interest of the miner to interrupt economic production, after consideration of the comment objecting to the provision, the Department of the Interior has concluded that the exemption for producing mines should be removed. The issue of whether the exemption is needed is likely to be academic because few producing mines will be found in designated Wilderness areas. For mining claims to be producing in a newly designated Wilderness Area, they are required to meet either of two circumstances: the claims were located and had discoveries prior to the enactment of the Federal Land Policy and Management Act so that operations are not subject to the non-impairment standard because they are valid existing rights, or the claimant is operating to the same "manner and degree" as at the time of the passage of the Act and thus has "grandfathered rights." BLM will be able to confirm quickly that a producing mine is in fact valid without suspending producing operations for a significant period of time because, normally, a USGS/Bureau of Mines mineral survey is prepared prior to designation. In order to assure that this amendment will not shut down operation on claims that have previously been determined to be valid, the section has been amended to apply only to proposed operations or previously approved operations occurring on mining claims for which there exists no approved, current BLM mineral examination report concluding that the claim is valid. This will ensure that a producing mine, or any other operation, located on an unpatented mining claim previously found valid by a mineral examination, is not temporarily shut down pending a new mineral examination after wilderness designation.

In the usual case, a producing operation will have been in a Wilderness Study Area prior to Wilderness designation, and BLM will have already prepared a mineral report confirming validity of the claim. This is because, under 43 CFR Subpart 3802, a determination of valid existing rights is required to be made while reviewing a plan of operations for a mining claim.

Several comments objected to the provision applying the time limitations imposed on the authorized officer by 43 CFR 3809.1–6, stating that BLM could not meet the 30-day deadline for reviewing plans of operations if mineral examinations were included in the review. The 30-day review period is generally sufficient to perform the mineral examination. However, 43 CFR 3809.1–6 does provide for extension of the deadline for 60 days when notice is provided of the circumstances justifying the additional time for review. In addition, periods when the area of operations is inaccessible for inspection do not count against the 60 days.

One comment also stated that section 3809.1–6 imposes a less rigorous standard on the miner than that Wilderness Act requires, and that that section should not be referred to at all in managing wilderness areas. The Wilderness Act standards are stated in 43 CFR 8560.4–6 (e) and (h). The plan of operations provided for in section 3809.1–6 is the mechanism used to apply these standards to performing assessment work and gathering evidence of claim validity in wilderness areas. The miner is required under 43 CFR 8560.4–6 (e) and (h) to comply with stipulations to protect the wilderness character of the area. These are imposed by the authorized officer as part of the approved plan of operations under section 3809.1–6.

Several comments stated that the proposed rulemaking arbitrarily infringes on the property rights of miners in their claims by requiring the Bureau to deny a plan of operations on the basis of mineral examiner's report alone, and that the rulemaking should be revised to require completion of a contest and exhaustion of appeals before a plan can be disapproved. This rulemaking has been carefully written to reach a fair balance between the property interests of mining claimants and the preservation policy enunciated in the Wilderness Act. The Wilderness Act protects valid rights existing on the date a wilderness is designated. For wilderness administered by BLM, this date is usually the date the specific wilderness designation legislation is enacted. Claims do not have to be adjudicated and found valid in order to be valid, but if on examination a mineral examiner has reason to doubt the validity of the claim, the public interest in wilderness protection expressed in the Wilderness Act justifies disapproval of the plan of operations or termination of an ongoing operation, so that the matter can be promptly and conclusively resolved in a contest proceeding. At the same time, the miner's property right in the claim requires that he have a fair opportunity to supply proof of its validity by gathering samples, mitigated by the requirement that surface disturbance be the minimum necessary. The rulemaking does not state that the mineral examiner will invalidate a claim, but only that the examiner will disapprove the plan of operations and initiate a contest to determine the status of the claim conclusively. No operations may proceed except under the authority of this rulemaking until the contest is concluded.

One comment stated that the provision for terminating a previously approved plan of operations if the mineral examiner finds no discovery is inconsistent with the provision allowing producing mines to continue in operation. If a mine is producing in quantity, the likelihood is greatly reduced that examination will disclose a failure to discover a valuable mineral deposit. The final rulemaking does not provide for delays in reviewing ongoing operations, but recognizes that there is little likelihood that review will result in shutting down the mines.

One comment objected that this rulemaking treats the plan of operations as a minerals management tool rather than a surface management tool. Congress has determined that wilderness shall be preserved against all

mining except what is carried on under valid existing rights. Review of the plan of operations under 43 CFR 3809.1–6 is the most reasonable stage of the process at which validity can be determined.

One comment objected that an examination that determines the validity of a claim based upon the marketability of a mineral at any given time or period of time may unfairly determine a claim invalid because of temporarily depressed markets for the mineral, and urged that the prudent man test be applied in judging validity of discoveries. The prudent man test requires that the "present marketability" of the mineral deposit be considered in determining whether the claim was valid at the time the wilderness area was withdrawn from the operation of the mining law and continues to be valid. The determination of "present marketability" has never comprised the examination of either cost or price factors as of a specific, finite moment of time, without reference to other economic factors. Rather, the question of whether something is "presently marketable at a profit" simply means that a mining claimant must show that, as a present fact, considering historic price and cost factors and assuming that they will continue, there is a reasonable likelihood that a paying mine can be developed. *Pacific Coast Molybdenum Co.*, 90 I.D. 353 (1983). If a mineral market is depressed, the mineral examiner will take into account the possibility of market resurgence, based upon the history of that market, in projecting marketability and determining the validity or invalidity of a discovery. At the same time, the mineral examiner will recognize that a trend may be considered sufficiently long-term to be permanent, in cases where there is little or no foreseeable demand for the mineral, despite past marketability.

One comment stated that BLM lacks the expertise to determine whether a valuable mineral discovery has been made, and that this would lead to a great amount of costly litigation. The authority of the Secretary of the Interior to contest mining claims stated in *Cameron* v. *United States*, 252 U.S. 450 (1920), has been delegated by the Secretary to the Director, Bureau of Land Management. Every State office of the Bureau has qualified mineral examiners whose responsibility it is to evaluate the validity of mining claims.

One comment stated that although BLM does not issue mitigating measures for a plan of operations that is denied, the rulemaking allows some operations to be conducted. The comment questions how mitigating measures can be applied to a nonexistent plan. The comment also questions how environmental protection can be assured without imposing mitigation stipulations. The comment apparently assumes that if a proposed plan of operations is denied, there will be no plan of operations at all, and then asks how BLM will ensure environmental protection. This final rulemaking prohibits the authorized officer from disallowing a plan of operations, either before contest proceedings begin or while they are pending, because of adverse conclusions in the mineral report, to the extent that the plan proposes assessment work or gathering proof of claim validity. In addition, the regulations at 43 CFR 3809.1–6 and 8560.1–2 do not allow the miner to proceed with work that disturbs the surface even insignificantly without a plan of operations, if mechanized earth-moving equipment or landing of aircraft is involved. Thus, a plan of operations is required for those activities. By allowing mining activities on such claims for the two named purposes and requiring a plan of operations, the rulemaking affords the authorized officer the opportunity to impose on these plans stipulations to protect the environment, in accordance with 43 CFR 3809.1–6 and the Wilderness Act, pending the outcome of contest proceedings.

One comment questioned why the rulemaking limits the claimant to reliance upon physically exposed minerals to prove claim validity. Because the Wilderness Act requires the claim to be valid on the date the land is withdrawn for wilderness, prospecting to make a discovery under the mining laws is not allowed in wilderness areas. To be discovered, a mineral has to be exposed. Geologic inference alone is insufficient to establish a discovery.

Another comment requested that the rulemaking use a physical exposure of mineralization as sufficient proof of a valuable discovery, stating that there is no readily available definition of "valuable mineral deposit." The term suggested by the comment, "physical exposure of mineralization," is vague. It implies that an exposure of a mineral in trace amounts, which may be far from economic, would be sufficient to support a discovery. The prudent man test will be applied by the mineral examiner to determine whether there has been a discovery of a valuable mineral deposit. This has long been the procedure for evaluating claims.

One comment stated that the rulemaking should include assessment work options and procedures for obtaining patents. These matters are covered in 43 CFR Parts 3850 and 3860.

Several comments suggested relating the term "insignificant surface disturbance" to the term "casual use." The terms relate to different issues. "Casual use" is used in 43 CFR Subpart 3809 to describe activities that may be carried on without an approved plan of operations. "Insignificant surface disturbance" refers to the degree of disturbance an activity performed under a plan of operations may cause. This rulemaking is designed to protect the wilderness character of the land, allowing assessment work or gathering of evidence to support a discovery existing before the wilderness was withdrawn only if it will cause insignificant surface disturbance under a plan of operations, except in the special circumstances provided for where surface disturbance exceeding the insignificant level is the minimum necessary to confirm preexisting exposures of a valuable mineral.

One comment suggested that the final sentence of the section be amended to except required reclamation work from the requirement that all operations shall cease once a final administrative decision is rendered declaring a claim to be invalid. This suggestion has been adopted in the final rulemaking.

The principal author of this final rulemaking is David E. Porter, Division of Recreation, Cultural, and Wilderness Resources, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it would not have a significant ecomonic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rulemaking favors no demographic group, and applies equally to all users, regardless of size, operating or planning to operate a mine in any wilderness area administered by the Bureau. Information is required from the public for certain uses and activities in wilderness areas in accordance with existing procedures found in 43 CFR Parts 2800, 2880, 2920, 3045, 3205, 3809, 4100 and 8372. The information collection requirements of those procedures referred to in this rule have been approved by the Office of

Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Part 8560

Grazing land, Livestock, National Wilderness Preservation System, Oil and gas exploration, Penalties, Public lands-mineral resources, Public lands-recreation, Recreation.

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) and the Wilderness Act of 1964 (16 U.S.C. 1131), Group 8500, Subchaper H, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

Dated: April 11, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

GROUP 8500—WILDERNESS MANAGEMENT

PART 8560—WILDERNESS AREAS

1. The authority citation for Part 8560 continues to read as follows:

Authority: 43 U.S.C. 1701 et seq., 16 U.S.C. 1131 et seq.

2. Section 8560.4–6 is amended by adding paragraph (j) to read as follows:

§ 8560.4–6 Mining law administration.

* * * * *

(j) Where there exists no current approved mineral examination report concluding that unpatented mining claims are valid, prior to approving plans of operations or allowing previously approved operations to continue on unpatented mining claims after the date on which the lands were withdrawn from appropriation under the mining laws, the authorized officer shall cause a mineral examination of the unpatented mining claim to be conducted by a Bureau of Land Management mineral examiner to determine whether or not the claim was valid prior to the withdrawal and remains valid. If the approved mineral examination report concludes that the claim lacks a discovery of a valuable mineral deposit, or is invalid for any other reason, the authorized officer shall either deny the plan of operation or, in the case of an existing approved operation, issue a notice ordering the cessation of operations and shall promptly initiate contest proceedings to determine the status of the claim conclusively. However, neither the adverse conclusions of an approved mineral examination report nor the pendency of contest proceedings shall constitute grounds to disallow a plan of operations to the extent the plan proposes operations that will cause only insignificant surface disturbance and are for the purpose of: (1) Taking samples or gathering other evidence of claim validity to confirm and corroborate mineral exposures which are physically disclosed and existing on the claim prior to the withdrawal date, or (2) performing the minimum necessary annual assessment work as required by subsection 3851.1 of this title. Surface disturbance exceeding the insignificant level is permissible only when it is the minimum disturbance necessary to remove mineral samples to confirm and corroborate preexisting exposures of a valuable mineral deposit discovered prior to the withdrawal. The requirement in this subsection for a mineral examination shall not cause a suspension of the time limitations governing approval of operating plans contained in subsection 3809.1–6 of this title. Once a final administrative decision is rendered declaring a claim to be null and void, all operations, except required reclamation work, shall be disallowed and shall cease unless and until such decision is reversed in a judicial review action.

[FR Doc. 86–9446 Filed 4–28–86; 8:45 am]

BILLING CODE 4310–84–M

LEGAL SERVICES CORPORATION

45 CFR Part 1625

Procedures Governing Denial of Refunding

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises the Corporation's regulations governing denial of an application for the refunding of a grant. Some of these revisions are required to comply with the provisions of the Corporation's appropriations acts for 1984, 1985, and 1986 (Pub. L. 98–166, 98–411, and 99–180). Other revisions are designed to improve the procedures and to ensure that they comply fully with the provisions of the Legal Services Corporation Act, as amended (42 U.S.C. 2996 et seq.) (the Act) and the cited appropriations acts, all of which require procedures which provide for a "timely, full, and fair" hearing. This rule (1) specifies new and more detailed procedures for denial of refunding, (2) establishes new and generally shorter time limits within which procedural steps in denying refunding must be taken, and (3) changes the burden of proof in denial of refunding proceedings. The regulations, as revised, are fully consistent with the requirements of both the Act and the appropriations acts.

EFFECTIVE DATE: This regulation is effective May 29, 1986.

FOR FURTHER INFORMATION CONTACT: John H. Bayly, Jr. General Counsel (202) 863–1820.

SUPPLEMENTARY INFORMATION:

Background

The Corporation has discovered that amendments to this part which were published as a final rule in the **Federal Register** of July 29, 1985 (50 FR 30714) were not properly adopted. Since this rulemaking proceeding covers the same areas, the amendments made in the July 29, 1985 publication are revoked through this final rule.

Pub. L. 98–166, which appropriated the Corporation's funding for the fiscal year ending on September 30, 1984, provided for revision of the Corporation's procedures under section 1011(2) of the Act. This requirement has been continued in appropriations acts for subsequent years. The appropriations acts provide that the proceedings must be in the form of a hearing to show cause, that the recipient has the burden of proof, and that all denial of refunding proceedings must be completed within 90 days, of which 30 days are allowed for the recipient to request a hearing, 30 days for completion of the hearing, and 30 days for rendering of the final decision.

Changes, including several deadline changes, have been necessitated by the acts. These changes are concentrated in §§ 1625.4, 1625.5, 1625.6, 1625.7, 1625.8, 1625.9, 1625.10, 1625.11, and 1625.12. Additional changes have been made to conform other sections to these revisions and to simplify, expedite, and ensure the fairness of the proceeding. The entire part, as revised, is republished for clarity and ease of use.

Notice of Proposed Rulemaking

Proposed new procedures were published in the **Federal Register** on February 7, 1986 (51 FR 4882) and opportunity for comment provided until March 10, 1986. Sixty-two timely comments were received. Several late comments were also received. In addition, oral comments were received directly by the Operations and Regulations Committee of the Board of Directors (Board) at its meeting in Tampa, Fla., February 20, 1986, and again in Jackson, Miss., March 12, 1986. All timely comments were considered in the development of the final rule. Late comments were also reviewed and no new or unforseen issues were raised.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3400, 3420 and 3460

[Circular No. 2582]

Coal Management—General; Competitive Leasing; and Environment; Amendments Implementing Certain Recommendations of the Commission on Fair Market Value for Federal Coal Leasing and Options Suggested by the Office of Technology Assessment

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351—359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Multiple Mineral Development Act (30 U.S.C. 521–531), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083–2075), and the Small Business Act of 1953, as amended (15 U.S.C. 631 et seq.), Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set out below.

PART 3400—[AMENDED]

1. The authority citation for Part 3400 is revised to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521–531 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 et seq.) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

2. Section 3400.4 is amended by:

a. Redesignating paragraphs (d), (e) and (f) as paragraphs (e), (f) and (g) respectively; and

b. Adding a new paragraph (d) to read:

* * * * *

§ 3400.4 Federal/state government cooperation.

* * * * *

(d) The regional coal team recommendations on leasing levels under § 3420.2(a)(4) of this title and on regional lease sales under § 3420.3–4(g) shall be accepted except: (1) In the case of an overriding national interest; or (2) in the case the advice of the Governor(s) which is contrary to the recommendations of the regional coal team is accepted pursuant to § 3420.4–3(c) of this title. In cases where the regional coal team's advice is not accepted, a written explanation of the reasons for not accepting the advice shall be provided to the regional coal team and made available for public review.

* * * * *

3. A new § 3400.6 is added to read:

§ 3400.6 Minimum comment period.

Unless otherwise required in group 3400 of this title, a minimum period of 30 days shall be allowed for public review and comment where such review is required for Federal coal management program activities under group 3400 of this title.

PART 3420—[AMENDED]

4. The authority citation for Part 3420 is revised to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521–531 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and the Small Business Act of 1953, as amended (15 U.S.C. 631 et seq.).

§ 3420.1–2 [Amended]

5. Section 3420.1–2 is amended by:

a. Revising the heading to read:

§ 3240.1–2 Call for coal resource and other resource information.

b. Amending paragraph (a) by removing the phrase "Call for Coal Resource Information "where it appears and replacing it with the phrase "Call for Coal and Other Resource Information" and by removing the phrase "coal resource development potential" where it appears and replacing it with the phrase "coal resource development potential and on other resources which may be affected by coal development";

c. Amending paragraph (b) by removing the phrase "Call for Coal Resource Information" where it appears and replacing it with the phrase "Call for Coal and Other Resource Information"; and

d. Amending paragraph (c) by removing the phrase "Call for Coal Resource Information" in the two places it appears and replacing it with the phrase "Call for Coal and Other Resource Information".

§ 3420.1–4 [Amended]

6. Section 3420.1–4 is amended by adding a new paragraph (f) to read:

* * * * *

(f) In its review of cumulative impacts of coal development, the regional coal team shall consider any threshold analysis performed during land-use planning as required by § 1610.4–4 of this title and shall apply this analysis, where appropriate, to the region as a whole.

§ 3420.1–8 [Amended]

7. Section 3420.1–8 is amended by:

a. Adding the figure "(a)" at the beginning of the existing text; and

b. Adding a new paragraph (b) to read:

* * * * *

(b) Activity planning shall begin with a regional coal team meeting to review market analyses and land-use planning summaries. The market analyses and

Published in 51 F.R. 18884, May 23, 1986 - Effective June 23, 1986

land-use planning summaries shall be available at least 45 days prior to such meeting.

§ 3420.3–4 [Amended]

8. Section 3420.3–4(b)(1) is amended by inserting after the first sentence of the section the sentence "One combination of tracts within the regional leasing level shall be identified as the proposed action for study in the environmental impact statement." and by removing from the second sentence the phrase "and shall identify the preferred alternative in the environmental impact statement".

9. Section 342.21(c)(2) is revised to read:

§ 3422.1 Fair market value and maximum economic recovery.

* * * * *

(c)(1) * * *

(2) Minimum bids shall be set on a regional basis and may be expressed in either dollars-per-acre or cents-per-ton. In no case shall the minimum bid be less than $100 per acre or its equivalent in cents-per-ton.

§ 3422.1–1 [Removed]

10. Section 3422.1–1 is removed in its entirety.

PART 3460—[AMENDED]

11. The authority citation for Part 3460 is revised to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521– 531 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

12. Section 3461.3–1(a) is amended by:

a. Redesignating paragraph (a)(2) as paragraph (a)(3); and

b. Adding a new paragraph (a)(2) to read:

(a) * * *

(2) Public comments on the application of the unsuitability criteria shall be solicited by a notice published in the **Federal Register.** This call for comments may be part of the call for public comments on the draft land-use plan or land-use analysis. This notice shall announce the availability of maps and other information describing the results of the application and the application process used.

* * * * *

May 1, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 86–11671 Filed 5–22–86; 8:45 am]

—II 2582

action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

List of Subjects

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR Part 556 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. By revising § 556.490 to read as follows:

§ 556.490 Ormetoprim.

A tolerance of 0.1 part per million is established for negligible residues of ormetoprim in the edible tissues of chickens, turkeys, ducks, salmonids, and catfish.

3. Section 556.640 is amended by revising paragraph (a) to read as follows:

§ 556.640 Sulfadimethoxine.

* * * * *

(a) In the uncooked edible tissues of chickens, turkeys, cattle, ducks, salmonids, and catfish at 0.1 part per million (negligible residue).

* * * * *

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

4. The authority citation for 21 CFR art 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

5. Section 558.575 is amended by adding new paragraph (c)(6) to read as follows:

§ 558.575 Sulfadimethoxine, ormetoprim.

* * * * *

(c) * * *

(6) *Catfish*—(i) *Amount.* 50 milligrams of active ingredients per kilogram of body weight per day.

(ii) *Indications for use.* For control of enteric septicemia of catfish caused by *Edwardsiella ictaluri* strains susceptible to sulfadimethoxine and ormetoprim combination.

(iii) *Limitations.* Administer for 5 consecutive days; withdraw 3 days before slaughter or release as stocker fish.

Dated: May 19, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86–11605 Filed 5–22–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF LABOR

29 CFR Part 12

Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs; Correction

AGENCY: Department of Labor.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule on relocation assistance and real property acquisition that appeared at page 7012 in the Federal Register of Thursday, February 27, 1986, (51 FR 7000). This action is necessary to correct amendatory language in that document.

EFFECTIVE DATE: April 28, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph McGovern, Office of Space and Telecommunications Management, 200 Constitution Avenue, NW., Washington, DC 20210, (FTS or 202) 523–6405.

On page 7012, column two, the fourth paragraph is corrected to read "Title 29 of the Code of Federal Regulations is amended by revising Part 12 to read as set forth at the end of this document."

Signed at Washington, DC, this 16th day of May, 1986.

Thomas C. Komarek,

Assistant Secretary for Administration and Management.

[FR Doc. 86–11713 Filed 5–22–86; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 357

[Department of the Treasury Circular, Public Debt Series No. 2–86]

Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills

Correction

In FR Doc. 86–11097 beginning on page 18260 in the issue of Friday, May 16, 1986, make the following corrections:

1. On page 18261, in the third column, in *Section 357.26 Payments*, (b), in the fifteenth line, "indemnity" should read "indemnify".

2. On page 18268, in the third column, in § 357.22(b)(2), in the sixth line "law and the terms of the" should read "law of the deceased owner's".

3. On page 18269, in the second column, in § 357.24(c), in the fifth line, "identify" should read "identity".

4. On page 18272, in the second column, in § 357.28(c)(3)(ii)(C), in the first line, "minor" should read "minors"; in § 357.28(d)(1), in the sixth line, "unicorporate" should read "unincorporated".

5. On page 18273, in the second column, in § 357.31(c)(3), in the twelfth line, "upper" should read "under".

BILLING CODE 1505–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3400, 3420 and 3460

[Circular No. 2582]

Coal Management—General; Competitive Leasing; and Environment; Amendments Implementing Certain Recommendations of the Commission on Fair Market Value for Federal Coal Leasing and Options Suggested by the Office of Technology Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the Federal coal management regulations to implement certain recommendations of the Commission on Fair Market Value for Federal Coal Leasing and policy options suggested by the Office of Technology Assessment. This final rulemaking combines the proposed rulemakings which appeared in the Federal Register on November 5, 1984 (49 FR 44221) and on March 5, 1985 (50 FR 10508), respectively. The amendments are designed to improve

the procedures used in leasing Federal coal.

EFFECTIVE DATE: June 23, 1986.

ADDRESS: Any inquiries or suggestions should be sent to: Director (650), Bureau of Land Management, Room 3600, Main Interior Bldg, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:

Thomas Walker (202) 343–4636
or
Robert C. Bruce (202) 343–8735

SUPPLEMENTARY INFORMATION: This final rulemaking combines two proposed rulemakings that would make amendments to the Federal coal leasing program and reflects the decisions of the Secretary of the Interior of February 21, 1986, on modifications of the coal leasing program. The first proposed rulemaking implemented certain recommendations of the Commission on Fair Market Value for Federal Coal Leasing and was published in the Federal Register on November 5, 1984 (49 FR 44221) with a 60-day comment period. The comment period was reopened on March 15, 1985, and extended to May 9, 1985, to coincide with the publication of the comment period on the Federal coal management program environmental impact statement supplement. The first proposed rulemaking was sent to State Governors and major interest groups at their request in July 1984. Following this distribution, informational briefings were held in July and December 1984 and January 1985.

The second proposed rulemaking implemented certain policy options suggested by the Office of Technology Assessment and was published in the Federal Register on March 15, 1985 (50 FR 10508) with a 30-day comment period, which was later extended to May 9, 1985. This second proposed rulemaking was sent to State Governors and interest groups in November 1984 and was available for comment at the December 1984 and January 1985 informational briefings.

The two proposed rulemakings were the subject of 16 comments, 10 on the proposed rulemaking implementing certain recommendations of the Commission on Fair Market Value for Federal Coal Leasing and 6 on the policy options suggested by the Office of Technology Assessment. The comments came from the following sources: three from energy companies; two from industry trade associations; two from conservation groups; one from a State government; one from a Federal agency; and one from an individual. The comments dealt with three of the recommendations of the Commission on Fair Market Value for Federal Coal Leasing and four on the options suggested by the Office of Technology Assessment and each comment is discussed in connection with the section covered.

No comment opposed the amendment made to § 3400.4 by the proposed rulemaking implementing certain policy options suggested by the Office of Technology Assessment which would make regional coal team recommendations rebuttable presumptions. Two of the comments did, however, state that the public must be allowed sufficient time to comment on all regional coal team meetings and the recommendations made at the meetings and the regional coal team must respond to all public comments. The comments also expressed the view that those making comments should be informed of the action taken on those comments. The instructions provided regional coal teams will emphasize that all regional coal team meetings are public meetings, that a comment period of sufficient length to give the public adequate opportunity to comment on the actions of the regional coal team must be provided and that public comments should be addressed in the recommendations of the regional coal team. The final rulemaking has adopted the change made to § 3400.4 without change. The final rulemaking also changes the language of § 3400.4(d) to bring it into agreement with the Secretary of the Interior's coal program decisions of February 21, 1986.

In connection with the revision made by the proposed rulemaking implementing certain policy options suggested by the Office of Technology Assessment which added § 3400.6, one comment suggested a review of all existing coal management regulations for the purpose of inserting at each point where public comment is required a minimum time period for such comment. The purpose of this comment is answered by the requirement added by § 3400.6 that the minimum period for public comment will be 30 days unless otherwise specified. The final rulemaking has adopted § 3400.6 without change.

The reinstatement of the threshold concept in § 3420.1–4 of the proposed rulemaking, which implemented the policy options of the Office of Technology Assessment, received six comments. The comments argued either that not enough of a change was being proposed or that too much change was being proposed. The comments from the conservation groups wanted to see the threshold levels applied twice, once during land use planning and a second time during the preparation of individual coal lease sale environmental impact statements. On the other hand, comments from industry groups, while supporting environmental protection, expressed the view that the provisions of the existing regulations, if fully implemented, would provide sufficient safeguards for environmental values.

One of the comments on the threshold issue expressed concerns about the overall land use planning and regional leasing process. In a lengthy discussion, the comment expressed the concern that the whole effort of land use and activity planning was to reduce the number of coal-bearing lands available for leasing, with no opportunity for reinstatement of those lands that were perceived to have defects. The comment went on to state that the effect of applying all the coal screens and then the threshold analysis during the land use planning process would be to force decisions that should not be made until the mining permit stage. The comment expressed the view that if a coal lease met all of the regulatory requirements, then a coal lessee should have a guaranteed right of development.

This comment directly relates to the issue of data adequacy, i.e., at what stage are data adequate for the purposes intended. The purpose of applying coal screens and threshold analyses to lands whose resources and other values are being considered during land use planning is to eliminate those coal-bearing lands with significant resource conflicts or those with resources protected by statute or regulation. For instance, surface mining methods could not be used on coal-bearing lands supporting critical habitat for an endangered species of plant or animal. This would be true whether or not the endangered species unsuitability criteria existed, since the critical habitats of endangered species are protected by statute. Leasing those lands for coal development would be useless, since the lessee could not mine the coal in those lands using surface mining methods.

Not all resource conflicts can properly be determined during land use and activity planning. One unsuitability criterion that generally is not applied at the land use planning stage is whether or not the lands being studied are located in an alluvial valley floor chiefly valuable for farming. In addition, the final judgment on whether the lands could be reclaimed to the standards of the Surface Mining Control and Reclamation Act of 1977 is best made at a later point in the process. The Secretary of the Interior determined in

1979 that reclamation feasibility is most efficiently determined at the mine permit stage.

For the reasons set out above, lessees cannot have a guaranteed right of development. Lessees assume certain risks when they obtain a Federal coal lease, or any lease for that matter, and all circumstances which might hinder or prevent coal development cannot be known years before development will occur. However, careful application of coal screens and thresholds during land use planning should minimize the possibility that a coal lease could not be mined because of resource conflicts.

After a careful review of the comments on the amendments made by the proposed rulemaking implementing policy options suggested by the Office of Technology Assessment to § 3420.1–4, the final rulemaking reinstates the threshold concept in the Coal Management regulations. In response to one comment that suggested that the language was ambiguous, the final rulemaking has adopted a clarifying amendment to § 3240.1–4(f).

There were four comments on the amendment to § 3420.3–4(b)(1) made by the proposed rulemaking implementing certain recommendations of the Commission on Fair Market Value for Federal Coal Leasing recommending a change in what was studied in the regional coal leasing environmental impact statements from "preferred alternative" to "proposed action." Three of the comments supported the change, viewing it as merely a change in semantics.

The fourth comment opposed the change on the basis it was contrary to the National Environmental Policy Act of 1969 and its implementing regulations. The comment noted that the designation of a "preferred alternative" by an agency need not indicate to the public that a final decision had been made prematurely. In fact, some of the regional coal leasing environmental impact statements contained explicit language noting that the preferred alternative did not bind the Secretary of the Interior in any way in reaching a final coal leasing decision. Despite these statements, certain groups continued to accuse the Department of the Interior of writing regional coal leasing environmental impact statements that supported already-made decisions. Therefore, the change of wording from "preferred alternative" to "proposed action," while not a comprehensive solution to the public perception problem, was put forward in the proposed rulemaking as a remedy. The change is consistent with the regulations of the Council on Environmental Quality because it is based on Chapter 516 of the Department of the Interior's Manual which implements the Council on Environmental Quality regulations and which was approved by the Council after public review and comment. The final rulemaking has adopted the amendment to § 3420.3–4(b)(1) without change.

Seven comments were directed to the amendment made to § 3422.1(c)(2) by the proposed rulemaking implementing certain recommendations of the Commission on Fair Market Value for Federal Coal Leasing. The Commission recommended changing the basis for calculating minimum bids. The majority of the comments opposed the establishment of minimum bids on a regional basis and the expression of those bids in cents-per-ton. The comments that supported the regional minimum bid concept expressed the view that regional minimum bids made sense and are justified by regional differences in coal quality and quantity. Those that opposed the change argued that intraregional differences may be as great as interregional differences. Those in opposition to the change supported the status quo or the establishment of minimum bids on a tract-by-tract basis. Two of the comments made the point that, if the purpose of minimum bids is to screen out nuisance bids, then elaborate regional minimum bids are unnecessary. Finally, two of the comments were extremely wary of the Department of the Interior's intentions in proposing a minimum bid system on a regional basis, viewing it as an attempt to eliminate minimum bids altogether and to sell Federal coal for less than it is worth.

In an effort to analyze the available options concerning minimum bids for coal, the Department of the Interior studied the development of the concept of minimum bids and the objectives which minimum bids might serve. The study revealed that historically minimum bids, which were initially termed "minimum acceptable bids," have served several purposes. These purposes were not all enunciated at the same time, but became blurred and intermingled as time passed. The purposes are not mutually exclusive, although certain objectives may be better expressed regionally or nationally, in dollars-per-acre or cents-per-ton, or as fees rather than as minimum bids.

Initially, in the offshore oil and gas leasing program, where the concept of minimum bids originated, minimum bids were designed to recover the costs of bringing lease tracts to sale. The July 19, 1979, regulations on Federal Coal Management stated the following objectives for minimum bids for Federal coal lease tracts: to dissuade non-serious bidders from disrupting coal lease sales; to recover the costs of bringing Federal coal lease tracts to offering at Federal coal lease sales; and to set a floor below which Federal coal would not be leased.

After careful consideration of the comments and of the objectives to be served by minimum bids, the final rulemaking retains a minimum bid of at least $100 per acre or its equivalent in cents-per-ton and allows the minimum bid to be expressed either regionally or nationally. The minimum bid may be set at more than $100 per acre in a region when analyses by a regional coal team indicates that a higher amount is appropriate. The minimum bid is not intended to represent fair market value for any tract. Fair market value is not established until after the sale is held.

Five comments were directed to the elimination of the requirement to announce the amounts bid at Federal coal lease sales made in the proposed rulemaking implementing certain recommendations of the Commission on Fair Market Value for Federal Coal Leasing. Two of the comments expressed support for the change without further comment; three opposed the change, with two of those comments strongly opposing it.

The change was made in response to two situations, one being when there is a lease sale in which both multiple-bid and single-bid tracts occurred and the other when intertract bidding is used as the bidding method.

In sales where there were both multiple-bid and single-bid tracts, the Commission on Fair Market Value for Federal Coal Leasing expressed the view that bids received on multiple-bid tracts would be an important information source for the sale panel in determining whether or not the single-bids constituted fair market value for those tracts. Withholding the amounts bid on single-bid tracts from the sale panel was suggested as a means of not unduly influencing its fair market value determinations. Sequestering the sale panel for the length of the post-sale review was suggested as a means of witholding these amounts. Because such sequestering is impractical, opening the bids but delaying bid announcements on single-bid tracts was then suggested as a means of implementing this recommendation of the Commission.

The second situation involves intertract bidding. One of the principles of intertract bidding is that not all coal lease tracts offered through intertract

bidding will be leased. Some tracts for which bids would be received would not be leased. If these bids represented the bidder's best estimate of the value of the tract, revealing the bid amounts might provide the bidder's competitors with valuable information about the bidder's financial situation and position in the industry in the area. In this case, the bid amount would be protected from disclosure under the provisions of the Freedom of Information Act.

Those comments opposing this change expressed the view that the public had a right to know all amounts bid and would file requests under the Freedom of Information Act to obtain the amounts. These comments termed the change a "gag rule" and feared the change would create the possibility of collusion between the personnel of the Department of the Interior and the bidders.

This proposed change was specifically discussed and was the subject of strenuous objections at the January 1985 informational briefing. It was pointed out in that briefing that the Commission on Fair Market Value for Federal Coal Leasing did not discuss or consider the change in any of its meetings. Further, the Commission's report mentioned it only briefly and did not strongly emphasize or consider it.

After careful consideration of the comments and a review of the analysis of this issue prepared by the Department of the Interior, the change made by the proposed rulemaking has not been adopted by the final rulemaking, leaving the existing regulation unchanged.

In order to implement the recommendation of the Commission on Fair Market Value Policy for Federal Coal Leasing on withholding bid amounts from the sale panel discussed earlier, the Department of the Interior is currently developing an administrative procedure for a two-stage lease sale process which will not require a regulatory change. If a sale involves several lease tracts and some of them receive multiple bids and the other receive single bids, then only the bids on the multiple tracts would be opened and announced at the first stage of the sale. The single bids would not be opened or announced at that time. The sale panel would use the amounts bid on the tracts receiving multiple bids in a postsale appraisal. The results of the postsale appraisal would then be used to reappraise the single-bid tracts. After this, a second stage of the sale would occur at which the single bids would be opened and announced.

Editorial and grammatical changes as needed have been made.

The principal author of this final rulemaking is Carole Smith, Division of Solid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes made by this final rulemaking should not affect small businesses in the coal mining industry to any greater degree than they should affect all coal mining businesses. Studying "proposed actions" rather than "preferred alternatives" in regional coal leasing environmental impact statements, establishing minimum periods for public comments, making regional coal team recommendations rebuttable presumptions, and allowing public comment on the application of the unsuitability criteria should not affect the number or frequency of small business set-aside coal leases offered for sale at regional coal lease sales. Retaining a minimum bid of at least $100 per acre, whether expressed nationally or regionally or in dollars-per-acre or cents-per-ton, should retain the status quo and not affect small business bidding opportunities at Federal coal lease sales to any greater or lesser extent than those opportunities are now affected.

There are no additional information collection requirements in this final rulemaking requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects

43 CFR Part 3400

Coal, Intergovernmental relations, Mines, Public lands—classification, Public lands—mineral resources.

43 CFR Part 3420

Administrative practice and procedure, Coal, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources.

43 CFR Part 3480

Coal, Environmental protection, Mines, Public lands—mineral resources.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351—359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Multiple Mineral Development Act (30 U.S.C. 521–531), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083–2075), and the Small Business Act of 1953, as amended (15 U.S.C. 631 et seq.), Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set out below.

May 1, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

PART 3400—[AMENDED]

1. The authority citation for Part 3400 is revised to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521–531 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 et seq.) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

2. Section 3400.4 is amended by:

a. Redesignating paragraphs (d), (e) and (f) as paragraphs (e), (f) and (g) respectively; and

b. Adding a new paragraph (d) to read:

* * * * *

§ 3400.4 Federal/state government cooperation.

* * * * *

(d) The regional coal team recommendations on leasing levels under § 3420.2(a)(4) of this title and on regional lease sales under § 3420.3–4(g) shall be accepted except: (1) In the case of an overriding national interest; or (2) in the case the advice of the Governor(s) which is contrary to the recommendations of the regional coal team is accepted pursuant to § 3420.4–3(c) of this title. In cases where the regional coal team's advice is not accepted, a written explanation of the reasons for not accepting the advice shall be provided to the regional coal team and made available for public review.

* * * * *

3. A new § 3400.6 is added to read:

§ 3400.6 Minimum comment period.

Unless otherwise required in group 3400 of this title, a minimum period of 30

days shall be allowed for public review and comment where such review is required for Federal coal management program activities under group 3400 of this title.

PART 3420—[AMENDED]

4. The authority citation for Part 3420 is revised to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521–531 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and the Small Business Act of 1953, as amended (15 U.S.C. 631 et seq.).

§ 3420.1–2 [Amended]

5. Section 3420.1–2 is amended by:

a. Revising the heading to read:

§ 3240.1–2 Call for coal resource and other resource information.

b. Amending paragraph (a) by removing the phrase "Call for Coal Resource Information "where it appears and replacing it with the phrase "Call for Coal and Other Resource Information" and by removing the phrase "coal resource development potential" where it appears and replacing it with the phrase "coal resource development potential and on other resources which may be affected by coal development";

c. Amending paragraph (b) by removing the phrase "Call for Coal Resource Information" where it appears and replacing it with the phrase "Call for Coal and Other Resource Information"; and

d. Amending paragraph (c) by removing the phrase "Call for Coal Resource Information" in the two places it appears and replacing it with the phrase "Call for Coal and Other Resource Information".

§ 3420.1–4 [Amended]

6. Section 3420.1–4 is amended by adding a new paragraph (f) to read:

* * * * *

(f) In its review of cumulative impacts of coal development, the regional coal team shall consider any threshold analysis performed during land-use planning as required by § 1610.4–4 of this title and shall apply this analysis, where appropriate, to the region as a whole.

§ 3420.1–8 [Amended]

7. Section 3420.1–8 is amended by:

a. Adding the figure "(a)" at the beginning of the existing text; and

b. Adding a new paragraph (b) to read:

* * * * *

(b) Activity planning shall begin with a regional coal team meeting to review market analyses and land-use planning summaries. The market analyses and land-use planning summaries shall be available at least 45 days prior to such meeting.

§ 3420.3–4 [Amended]

8. Section 3420.3–4(b)(1) is amended by inserting after the first sentence of the section the sentence "One combination of tracts within the regional leasing level shall be identified as the proposed action for study in the environmental impact statement." and by removing from the second sentence the phrase "and shall identify the preferred alternative in the environmental impact statement".

9. Section 342.21(c)(2) is revised to read:

§ 3422.1 Fair market value and maximum economic recovery.

* * * * *

(c)(1) * * *

(2) Minimum bids shall be set on a regional basis and may be expressed in either dollars-per-acre or cents-per-ton. In no case shall the minimum bid be less than $100 per acre or its equivalent in cents-per-ton.

§ 3422.1–1 [Removed]

10. Section 3422.1–1 is removed in its entirety.

PART 3460—[AMENDED]

11. The authority citation for Part 3460 is revised to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521– 531 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

12. Section 3461.3–1(a) is amended by:

a. Redesignating paragraph (a)(2) as paragraph (a)(3); and

b. Adding a new paragraph (a)(2) to read:

(a) * * *

(2) Public comments on the application of the unsuitability criteria shall be solicited by a notice published in the Federal Register. This call for comments may be part of the call for public comments on the draft land-use plan or land-use analysis. This notice shall announce the availability of maps and other information describing the results of the application and the application process used.

* * * * *

[FR Doc. 86–11671 Filed 5–22–86; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Part 205

General Administration of Public Assistance Programs; Federal Financial Participation in the Cost of a Statewide Mechanized Claims Processing and Information Retrieval System in the Aid to Families With Dependent Children Program

Correction

In FR Doc. 86–8419 beginning on page 13001 in the issue of Thursday, April 17, 1986, make the following corrections:

1. On page 13001, in the second column, in the **SUMMARY** paragraph, in the eighth line, "96–264" should read "96–265".

2. On page 13002, in the first column, in the first paragraph, in the fourteenth line, "percent on" should read "percent FFP on".

3. On page 13004, in the second column, in the *Response* paragraph under "*Issue: Annually Updated APD.*", in the second line, "updates" should read "updated" and in the fourth line, "updated" should read "updates".

4. On page 13004, in the third column, in the *Response* paragraph under "*Issue: Facilitation of Integrated Systems.*", in the third line, "or" should read "of".

5. On page 13005, in the second column, in the third complete paragraph, in the twelfth line, "ADP" should read "APD".

6. On page 13006, in the first column, in § 205.35(b), in the definition "*Hardware*", in the first line, "produced" should read "produces".

BILLING CODE 1505–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3610

[Circular No. 2583]

Sales; Emergency Final Rulemaking Establishing Procedures for Noncompetitive Sales in Excess of 100,000 Cubic Yards of Mineral Materials

PART 3610—[AMENDED]

1. The authority citation for Part 3610 is revised to read:

Authority: The Materials Act of July 31, 1947, as amended (30 U.S.C. 601, 602).

2. Section 3610.2–1 is amended by adding a new paragraph (d) to read:

Under the authority of the Materials Act of July 31, 1947, as amended (30 U.S.C. 601, 602), Part 3610, Group 3600, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

§3610.2–1 Limitations in volumes

* * * * *

(d) The volume limitations contained in paragraphs (a) and (b) of this section shall not apply where the Director determines that circumstances make it impossible to obtain competition or where, because of an emergency situation affecting public property, health and safety, there is insufficient time to invite competitive bids.

J. Steven Griles,

Assistant Secretary of the Interior.

June 13, 1986.

[FR Doc. 86–13741 Filed 6–17–86; 8:45 am]

Published in 51 F.R. 22079, June 18, 1986 - Effective June 18, 1986

#2583

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3610

[Circular No. 2583]

Sales; Emergency Final Rulemaking Establishing Procedures for Noncompetitive Sales in Excess of 100,000 Cubic Yards of Mineral Materials

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency final rulemaking.

SUMMARY: The existing mineral materials sales regulations authorize the noncompetitive sale of mineral materials not in excess of 100,000 cubic yards in any individual sale or 200,000 cubic yards in any one State for the benefit of any entity in any period of twelve consecutive calendar months. This emergency final rulemaking would authorize the noncompetitive sale of unlimited amounts of mineral materials where the Director, Bureau of Land Management, determines that competition is not possible under the circumstances or there exists an emergency situation that threatens public property, health or safety.

EFFECTIVE DATE: June 18, 1986.

ADDRESS: Comments, questions or inquiries should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Brenda Aird, (202) 343-8537.

SUPPLEMENTARY INFORMATION: The existing regulations covering sales of mineral materials limit the noncompetitive sale of mineral materials to 100,000 cubic yards or weight equivalent in any individual sale and 200,000 cubic yards or weight equivalent to any entity per year per State. The existing regulations require that the United States receive the appraised fair market value for any mineral materials sold noncompetitively. These limitations on the amount of mineral materials that can be sold noncompetitively do not apply to sales for the Trans-Alaska Pipeline System or the Alaska Natural Gas Transportation System. The Material Sales Act (30 U.S.C. 601 et seq.), allows the Secretary of the Interior to sell mineral materials noncompetitively where their competitive sale would be impractical. The existing regulations do not make any provision for situations where competition is not possible or where emergencies exist that threaten public property, health or safety.

The rising level of the Great Salt Lake, Utah, has created a situation that is threatening a major transportation corridor, thereby endangering both public and private property, as well as the public health and safety. Representatives of a transcontinental railroad threatened by the rising level of the Great Salt Lake have requested that the Department of the Interior provide the immediate sale of large quantities of mineral materials for the purpose of protecting the endangered transportation corridor. The existing regulations limit the Department's authority to sell unlimited amounts of mineral materials noncompetitively. Further, the emergency need for this mineral material does not permit the time-consuming process of making the mineral materials available through the competitive process required by § 3610.3 of the existing regulations. Therefore, the Department has determined that it cannot meet the request for unlimited amounts of minerals materials to meet this or any other emergency without amending the existing regulations in 43 CFR Part 3610. Further, this emergency situation has convinced the Department that it needs the flexibility to meet such emergency situations in the future, wherever they may arise. This final rulemaking will amend Part 3610 to provide the Department, acting through the Bureau of Land Management, the authority needed to meet all such emergencies.

Because time is of the essence in meeting the current emergency at the Great Salt Lake, this change is being issued as a final rulemaking and is being issued under the exceptions in the Administrative Procedure Act (5 U.S.C. 553) because notice and public involvement are impracticable and not in the public interest. It also has been determined that it is in the public interest to provide immediate relief through the authorization to sell noncompetitively mineral materials to meet the pending emergency. This determination requires that the final rulemaking be made effective upon publication.

The public is requested to give comments on the issue of providing the Department of the Interior with the flexibility to meet such emergencies. These comments will be reviewed and if any changes are deemed necessary, the regulations will be further amended to reflect the changes.

The principal author of this final rulemaking is Brenda Aird, Division of Mining Law and Salable Minerals, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This final rulemaking will give the Department of the Interior the flexibility to meet a request for the noncompetitive sale of large amounts of mineral materials to meet situations where public property, health and safety are threatened or where competition is not possible under the circumstances. This authority will be equally applicable to all entities, whether large or small.

The final rulemaking contains no information collection requirements requiring the approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Part 3610

Government contracts, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Under the authority of the Materials Act of July 31, 1947, as amended (30 U.S.C. 601, 602), Part 3610, Group 3600, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

J. Steven Griles,

Assistant Secretary of the Interior.

June 13, 1986.

PART 3610—[AMENDED]

1. The authority citation for Part 3610 is revised to read:

Authority: The Materials Act of July 31, 1947, as amended (30 U.S.C. 601, 602).

2. Section 3610.2-1 is amended by adding a new paragraph (d) to read:

§3610.2-1 Limitations in volumes

* * * * *

(d) The volume limitations contained in paragraphs (a) and (b) of this section shall not apply where the Director determines that circumstances make it impossible to obtain competition or where, because of an emergency situation affecting public property, health and safety, there is insufficient time to invite competitive bids.

[FR Doc. 86-13741 Filed 6-17-86; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 387

[BMCS Docket No. MC-121; Amdt. No. 83-16]

Minimum Levels of Financial Responsibility for Motor Carriers; May Petition

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: The FHWA is adopting an interim rule to permit motor carriers of property to satisfy its financial responsibility requirements by self-insuring if they have received approval from the Interstate Commerce Commission (ICC) to self-insure and have maintained a "satisfactory" safety rating assigned by the FHWA. The motor carrier industry is currently facing an "insurance crisis" in which many motor carriers with safe operating records, good accident experience, and strong financial position are experiencing great difficulties in obtaining federally mandated insurance. Motor carriers are being charged dramatically higher premiums, or in some cases being denied coverage and being forced into State assigned-risk plans. In response to this emergency situation, the FHWA is amending its regulations to provide an option for certain motor carriers to fulfill their obligation to protect the public. Elsewhere in this issue of the **Federal Register**, the FHWA is initiating a rulemaking action to consider the issue of self-insurance further, to ascertain whether any additional conditions should be established for qualification as a self-insurer, and to determine what qualifications, conditions, reporting requirements, and other procedures should be established to extend the self-insurance alternative to other motor carriers.

EFFECTIVE DATE: June 18, 1986.

ADDRESS: All written comments should refer to the docket number that appears at the top of this document and should be submitted (preferably in triplicate) to Room 3404, Bureau of Motor Carrier Safety, 400 Seventh Street, SW., Washington, D.C. 20590. The comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday, except for legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety (202) 755-1011; or Mr. Thomas P. Holian, Office of the Chief Counsel (202) 426-0346, Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The FHWA has received a petition from May Trucking Company (May), a motor common carrier of property required to maintain a minimal level of financial responsibility of $1 million to cover bodily injury, property damage, and environmental restoration claims arising from its commercial motor vehicle operation. In its petition, May requested that it be granted a waiver from the requirements of the FHWA's regulations or, in the alternative, that FHWA institute a rulemaking proceeding to amend its financial responsibility rules and immediately adopt interim rules that would permit a motor carrier to comply with the minimum financial responsibility requirements established by the FHWA under section 30 of the Motor Carrier Act of 1980; 49 U.S.C. 10927 note (1982 & Supp. II 1984), by qualification as a self-insurer.

When the FHWA adopted final rules implementing section 30, it specifically declined to permit a motor carrier to comply with the minimum financial responsibility requirements by qualifying as a self-insurer. (46 FR 30974, June 11, 1981, now codified at 49 CFR 387.1-387.17.) The FHWA recognized at that time that self-insurance could be a viable alternative means of assuring that a motor carrier maintained a level of financial responsibility that was adequate to protect the public, but that self-insuance would not necessarily afford precisely the same level of protection as traditional insurance coverage. Moreover, there appeared to be little support for self-insurance as an alternative means for complying with the financial responsibility requirements. It appeared that other alternatives adequately protected the public while providing motor carriers with considerable flexibility. Because the FHWA was also concerned that implementation of a self-insurance program would require a substantial commitment of agency resources, and that this commitment was not then justified, the FHWA did not adopt a self-insurance alternative.

Since 1981 there has been a significant deterioration in the affordability and availability of insurance for motor carriers. This situation has recently taken on the characteristics of a crisis facing the motor carrier industry both because of its severity and the breadth of its impact. Information that FHWA has received leads it to believe that many insurers are refusing to renew policies of insurance, or are dramatically increasing premiums for such coverages, without regard to the past claims experience of individual motor carriers. Accordingly, the FHWA believes that during this crisis the currently permitted means for complying with the FHWA's financial responsibility requirements do not provide significant alternatives and have curtailed the motor carriers' flexibility to operate.

The question which remains is whether such a limitation on motor carrier flexibility is necessary to protect the public. Information currently available to the FHWA suggests that it is not. The FHWA does not believe that the current high insurance premiums are necessary to induce motor carriers to operate more safely.

In its petition, May requested a waiver that would permit it to comply with the financial responsibility requirements by self-insuring. The FHWA does not believe that the insurance problems described by May in its petition are unique to May. Thus, the FHWA believes that a waiver for May alone would be inappropriate.

May holds a certificate of public convenience and necessity issued by the ICC, and is subject to regulation by the Commission. May petitioned the ICC for authority to qualify as a self-insurer on September 30, 1985. The ICC denied May's request on December 9, 1985, and May filed a Petition to Reopen that decision on December 30, 1985. The Commission has recently adopted interim rules applicable to requests for authority to self-insure. These interim rules provide:

Section 1043.5 Qualifications as a self-insurer and other securities or agreements.

(a) *As a self-insurer.* The Commission will give consideration to and will approve the

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2584]

43 CFR Part 1820

Application Procedures; Changes of Addresses of State Offices

BUREAU OF LAND MANAGEMENT
CALIFORNIA STATE OFFICE
CENTRAL LIBRARY COPY

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 1201), Subpart 1821, Part 1820, Group 1800, Subchapter A, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 1820—[AMENDED]

1. The authority citation for Part 1820 continues to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted

2. Section 1821.2-1(d) is amended by revising the entries for the Colorado and Nevada State Offices to read as follows:

§ 1821.2-1 [Amended]

* * * * *

(d) * * *

State Office and Area of Jurisdiction

* * * * *

Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215—Colorado.

* * * * *

Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520—Nevada

* * * * *

Dated: June 24, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 86-14650 Filed 6-27-86; 8:45 am]

Published in 51 F.R. 23547, June 30, 1986 - Effective June 24, 1986

II 2584

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2584]

43 CFR Part 1820

Application Procedures; Changes of Addresses of State Offices

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rulemaking amends 43 CFR Part 1820 to reflect the new addresses of 2 of the State Offices of the Bureau of Land Management. All filings and other documents relating to public lands in the respective States shall be filed at the new addresses of the State Offices having jurisdiction over the area involved.

EFFECTIVE DATE: June 24, 1986, for the Nevada State Office, and September 1, 1986, for the Colorado State Office.

FOR FURTHER INFORMATION CONTACT: Eleanor R. Schwartz, (202)-343-8735.

SUPPLEMENTARY INFORMATION: This final rulemaking reflects the administrative action of relocating 2 of the State Offices of the Bureau of Land Management.

It changes the addresses for the filing of documents relating to public lands in several States, but makes no other changes in filing requirements. Therefore, this amendment is published as a final rulemaking with the effective date shown above.

The Department of the Interior has determined that because this rule is an administrative action, it is not a major rule for purposes of E.O. 12291, and neither an environmental impact analysis nor a regulatory flexibility analysis is required. There are no additional information collection requirements imposed by this final rulemaking.

List of Subjects in 43 CFR Part 1820

Administrative practice and procedures, Alaska, Archives and records, Public lands.

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 1201), Subpart 1821, Part 1820, Group 1800, Subchapter A, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 1820—[AMENDED]

1. The authority citation for Part 1820 continues to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted

2. Section 1821.2-1(d) is amended by revising the entries for the Colorado and Nevada State Offices to read as follows:

§ 1821.2-1 [Amended]

* * * * *

(d) * * *

State Office and Area of Jurisdiction

* * * * *

Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215—Colorado and Kansas

* * * * *

Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520—Nevada

* * * * *

Dated: June 24, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 86-14650 Filed 6-27-86; 8:45 am]

BILLING CODE 3410-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

National Flood Insurance Administration

44 CFR Part 64

[Docket No. FEMA 6718]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION:

The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fourth column, as of that date, flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable floodplain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the Federal Register.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Deputy Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notfication addressed to the Chief Executive Officer

#2584

There is no Catalog of Federal Domestic Assistance number involved.

The proposed rules, as amended, are hereby adopted and are set forth below.

List of Subjects in 38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

Approved: June 18, 1986.

Thomas K. Turnage,

Administrator.

PART 19—[AMENDED]

38 CFR Part 19, Board of Veterans Appeals, is amended as follows:

1. Section 19.129 is amended by removing the last sentence in paragraph (b) and by adding a new paragraph (c) to read as follows:

§ 19.129 Rule 29; time limit for filing.

* * * * *

(c) *Response to supplemental statement of the case.* Where a supplemental statement of the case is furnished in accordance with Rule 22 (§ 19.122), a period of 30 days will be allowed for response. Provided a substantive appeal has been timely filed in accordance with paragraph (b) of this section, the response to a supplemental statement of the case is optional and is not required for the perfection of an appeal unless the supplemental statement of the case covers issues that were not included in the original statement of the case. (38 U.S.C. 4005(d)(3))

2. Section 19.132 is amended by adding another holiday. The section is revised to read as follows:

§ 19.132 Rule 32, legal holidays.

For the purpose of Rule 31 § 19.131), the legal holidays, in addition to any other day appointed as a holiday by the President or the Congress of the United States, are as follows: New Year's Day—January 1; Inauguration Day—January 20, of every fourth year or, if the 20th falls on a Sunday, the next succeeding day selected for public observance of the inauguration; Martin Luther King, Jr.'s Birthday-third Monday in January; Washington's Birthday—third Monday in February; Memorial Day—last Monday in May; Independence Day—July 4; Labor Day—first Monday in September; Columbus Day—second Monday in October; Veterans' Day—November 11; Thankgiving Day—fourth Thursday in November, and Christmas Day—December 25, (5 U.S.C. 6103)

[FR Doc. 86-16411 Filed 7-21-86; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2584]

43 CFR Part 1820

Application Procedures; Changes of Addresses of State Offices; Correction Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice to final rulemaking.

SUMMARY: This notice corrects an error in the "area of jurisdiction" for the Colorado State Office previously published in a final rulemaking on June 30, 1986 (51 FR 23547). In § 1821.2-1(d), the words "and Kansas" are removed, so that the area of jurisdiction for the Colorado State Office is "Colorado."

FOR FURTHER INFORMATION CONTACT: Eleanor R. Schwartz (202) 343-6735.

July 17, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 86-16433 Filed 7-21-86; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73, 74 and 76

Oversight of the Radio and TV Broadcast Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends broadcast and Cable TV regulations in Parts 73, 74 and 76 of the rules of the FCC. Amendments are made to delete regulations that are no longer necessary, correct inaccurate rule texts, contemporize certain requirements and to execute editorial revisions as needed for purposes of clarity and ease of understanding.

EFFECTIVE DATE: July 22, 1986.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Policy and Rules Division, Mass Media Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

Order

Adopted: July 11, 1986.
Released: July 15, 1986.
By the Chief, Mass Media Bureau.

1. In this *Order,* the Commission focuses its attention on the oversight of its radio and TV broadcast rules. Modifications are made herein to update, delete, clarify or correct broadcast regulations as described in the following amendment summaries:

(a) Amendments are made in paragraph (c)(1) of § 73.45, AM antenna systems, clarifying the requirement to file a Form 302 when measurements show antenna resistance varies by 2% or more from that shown on the station authorization. Present text states the Form 302 must be filed "in accordance with § 73.54." It should state that the Form 302 must be *filed with the information and measurement data specified in § 73.54.*

Also in this section, a new subparagraph (2) will be added to paragraph (c). Subparagraph (c)(1) will continue to state what measurement results trigger the requirement to file a Form 302. The new subparagraph (c)(2) will direct that certain information may be sent via informal notification to the FCC in Washington when direct reading power meters are used at the station. (See Appendix item 2.)

(b) Two modifications are made in § 73.54, Antenna resistance and reactance measurements, for ease of understanding. In paragraph (d) reference is made to "notification" being given without stating to whom. It is to the FCC in Washington, DC and is amended to so state.

In paragraph (e), the rule's final paragraph, the requirement is made to "submit the above information" without clearly stating "the above information" is that found in paragraph (d). Revision is made herein. (See Appendix item 3.)

(c) Subparagraph (b)(2) and paragraph (c) of § 73.128, AM stereophonic broadcasting, were removed and marked [Reserved] in the Report and Order in Mass Media Docket 85-125 adopted December 20, 1985.

Paragraphs (b)(2) and (c) happen to be at the end of § 73.128. Marking them [Reserved] retains two useless appendages at the rule's end. They are excised herein, ending the rule with the text of paragraph (b)(1)(iii). (See Appendix item 4.)

(d) Table B in § 73.207, Minimum distance separation between stations, was revised by Commission *Order* on December 13, 1984, to conform to the agreements reached in the new Working Arrangement between the United States and Canada dated September 7, 1984. *Order* 49 FR 50045, December 26, 1984.

The revised Table B was correctly printed in Title 47 of the Code of Federal Regulations in the publication revised as of October 1, 1985. However, the *old* Table B also was inadvertently printed. So, § 73.207 presently shows two Table

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2640

[Circular No. 2585]

Federal Aviation Administration Airport Grants; Amendments to Comply with Statutory Changes

Under the authority of section 516 of the Airport and Airways Improvement Act of September 3, 1982 (49 U.S.C. 2215), Subparts 2640 and 2641, Part 2640, Group 2600, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations are amended as set out below.

Part 2640 consisting of Subparts 2640 and 2641, is revised to read:

PART 2640—FAA AIRPORT GRANTS

Subpart 2640—Airport and Airway Improvement Act of September 3, 1982

Sec.
2640.0–1 Purpose.
2640.0–3 Authority.
2640.0–5 Definitions.
2640.0–7 Cross reference.

Subpart 2641—Procedures

2641.1 Request by Administrator for conveyance of property interest.
2641.2 Action on request.
2641.3 Publication and payment.
2641.4 Approval of conveyance.
2641.5 Reversion.

Authority: Section 516, Airport and Airway Improvement Act of 1982 (49 U.S.C. 2215).

Subpart 2640—Airport and Airway Improvement Act of September 3, 1982

§ 2640.0–1 Purpose.

This subpart sets forth procedures for the issuance of conveyance documents for lands under the jurisdiction of the Department of the Interior to public agencies for use as airports and airways.

§ 2640.0–3 Authority.

Section 516 of the Airport and Airway Improvement Act of September 3, 1982 (49 U.S.C. 2215).

§ 2640.0–5 Definitions.

As used in this subpart, the term:

(a) "Act" means section 516 of the Airport and Airway Improvement Act of September 3, 1982 (49 U.S.C. 2215).

(b) "Secretary" means the Secretary of the Interior.

(c) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(d) "Administrator" means the person authorized by the Secretary of Transportation to administer the Act.

(e) "Applicant" means any public agency as defined in § 153.3 of title 14 of the Code of Federal Regulations, which, either individually or jointly with other such public agencies, submits to the Administrator an application requesting that lands or interests in lands under the jurisdiction of the Department of the Interior be conveyed to such applicant under the Act.

(f) "Property interest" means the title to or any other interest in lands or any easement through or other interest in air space.

(g) "Conveyance document" means a patent, deed or similar instrument which transfers title to lands or interests in lands.

§ 2640.0–7 Cross reference.

The regulations of the Federal Aviation Administration under the Act are found in 14 CFR Part 153.

Subpart 2641—Procedures

§ 2641.1 Request by Administrator for conveyance of property interest.

Each request by the Administrator in behalf of the applicant for conveyance of a property interest in lands under the jurisdiction of the Department of the Interior shall be filed with the State Office of the Bureau of Land Management having jurisdiction of the lands or interests in lands in duplicate, and shall contain the following:

(a) A copy of the application filed by the requesting public agency with the Administrator.

(b) A description of the lands or interests in lands, if surveyed, by legal subdivisions, specifying section, township, range, meridian and State. Unsurveyed lands shall be described by metes and bounds with a tie to a corner of the public-land surveys if within two miles; otherwise a tie shall be made to some prominent topographic feature and the approximate latitute and longitude shall be provided.

§ 2641.2 Action on request.

(a) Upon receipt of the request from the Administrator, the authorized officer shall determine whether the requested conveyance is inconsistent with the needs of the Department of the Interior, or any agency thereof, and shall notify the Administrator of the determination within 4 months after receipt of the request. On determining that the conveyance is not inconsistent with the needs of the Department of the Interior, the authorized officer also shall determine what, if any, convenants, terms, conditions and reservations should be included in the conveyance, if made. Any conveyance shall be made subject to valid existing rights of record, and to those disclosed as a result of publication or otherwise.

(b) Unless otherwise specifically provided by law, no conveyance shall be made of Federal lands within any national park, national monument, national recreation area, or similar area under the administration of the National Park Service; within any unit of the National Wildlife Refuge System or similar area under the jurisdiction of the United States Fish and Wildlife Service; within any area designated part of the National Wilderness Preservation. System or any area designated as a wilderness study area; or within any national forest or Indian reservation.

(c) The applicant shall, upon request by the authorized officer, submit a deposit in an amount determined by the authorized officer, to cover the administrative costs of processing the application, including the cost of survey, if one is necessary, and issuing of a document of conveyance. No document of conveyance shall be issued for unsurveyed lands. The processing of applications under this part shall be accomplished without any expense to the Bureau of Land Management.

(d) Each applicant also shall pay the cost of publication of a notice in the **Federal Register** and in a newspaper of general circulation in the area in which the lands are located.

§ 2641.3 Publication and payment.

(a) Prior to issuance of a conveyance document, the authorized officer shall publish a notice of realty action in the **Federal Register** and in a newspaper of general circulation in the area of the lands to be conveyed. The notice shall identify the lands proposed for

Published in 51 F.R. 26893, July 28, 1986 - Effective August 27, 1986

conveyance and contain the terms, covenants, conditions and reservations to be included in the conveyance document. The notice shall provide public comment period of 45 days from date of publication in the **Federal Register.** Comments shall be sent to the Bureau of Land Management office issuing the notice.

(b) The notice of realty action may segregate the lands or interests in lands to be conveyed to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the notice of realty action shall terminate either upon the issuance of a document of conveyance or 1 year after the date of publication, whichever occurs first.

(c) The determination concerning the granting or denial of an application shall be sent by the authorized officer to the applicant and to any party who commented on the application.

(d) The authorized officer shall advise the applicant whether any balance is due on the payments required of the applicant and of the time within which payment shall be made. Failure to pay the required amount within the allotted time shall constitute grounds for rejection of the application. If the applicant has deposited with the authorized officer an amount in excess of the payments required, the authorized officer shall so advise the applicant and return the excess payment.

§ 2641.4 Approval of conveyance.

(a) Each conveyance document shall contain appropriate covenants, terms, conditions and reservations requested by the Administrator, and those required for protection of the Department of the Interior or any agency thereof.

(b) Upon receipt of the payment required by §§ 2641.2 (c) and (d) of this title and after consideration of comments received, the authorized officer shall make a decision upon the application. If the decision is to make a conveyance, the authorized officer shall send the conveyance document to the Attorney General of the United States for consideration. Upon approval by the Attorney General, the authorized officer shall issue the conveyance document.

§ 2641.5 Reversion.

A conveyance shall be made only on the condition that, at the option of the Administrator, the property interest conveyed shall revert to the United States in the event that the lands in question are not developed for airport or airway purposes or are used in a manner inconsistent with the terms of the conveyance. If only a part of the property interest conveyed is not developed for airport purposes, or is used in a manner inconsistent with the terms of the conveyance, only that particular part shall, at the option of the Administrator, revert to the United States.

Dated: July 1, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 86-16775 Filed 7-25-86; 8:45 am]

II 2585

Dated: July 15, 1986.

J.W. McGraw,

Acting Assistant Administrator.

[FR Doc. 86-16649 Filed 7-25-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2640

[Circular No. 2585]

Federal Aviation Administration Airport Grants; Amendments to Comply with Statutory Changes

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the existing regulations at 43 CFR Part 2640 to reflect changes required by the Airport and Airways Improvement Act of September 3, 1982. The final rulemaking also revises the regulations to make them consistent with the language of the Act and to make changes in existing definitions to reflect changes in administrative policy concerning conveyance of lands for use as public airports.

EFFECTIVE DATE: August 27, 1986.

ADDRESS: Any suggestions or inquiries should be sent to: Director (320), Bureau of Land Management, Room 3643, Main Interior Bldg, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gary Rowe (202) 343-8693.

SUPPLEMENTARY INFORMATION: A proposed rulemaking amending the existing regulations on Federal Aviation Administration Airport Grants was published in the Federal Register on August 7, 1985 (50 FR 31897), with a 60-day comment period ending on October 7, 1985. During the comment period, 5 comments were received, all from Federal agencies. The comments have carefully reviewed and are discussed in this preamble, with only those sections that were the subject of comments being discussed.

Several of the comments recommended that the use of the word "lands" be expanded to include "other interests in lands." This comment has been adopted by the final rulemaking and the phrase "or interests in lands" has been added to the final rulemaking in several instances to make it clear that the conveyance can include lands and interests in lands, as appropriate.

One comment suggested that the term "conveyance document," which is used several times in the proposed rulemaking, should be defined. This suggestion has been adopted by the final rulemaking and a definition of the term "conveyance document" has been added to § 2640.0-5.

One comment suggested that the final rulemaking should be specific as to where an application for an airport grant should be filed. The proposed rulemaking and the existing regulations provide that an application be filed with the Bureau of Land Management. The existing practice is for the Federal Aviation Administration to file an application with the Washington Office of the Bureau of Land Management, which sends it to the appropriate State office for action. The final rulemaking amends the proposed rulemaking to require that an application be filed in the State Office of the Bureau of Land Management having jurisdiction of the lands covered by the application. This change recognizes that an application must be handled at the appropriate State office and should make the processing of an application more efficient.

Several comments made the point that unsurveyed public lands cannot be transferred until they have been surveyed. In recognition of this fact, the final rulemaking amends § 2641.2(c) of the proposed rulemaking to include the requirement that unsurveyed lands cannot be conveyed until surveyed and to specifically include the payment of any required survey costs as part of the administrative costs that an applicant must bear before a conveyance document can be issued. The final rulemaking also amends this section of the proposed rulemaking to make it clear that the processing of an application for an airport grant will be without cost to the Bureau of Land Management.

In connection with § 2641.2 of the proposed rulemaking, one comment objected to the use of the phrase "not inconsistent" and suggested a change in the section. After careful review of the comment and the language of the proposed rulemaking and the Airport and Airway Improvement Act, the final rulemaking continues to use the phrase. The phrase is a repeat of the test established in the Act and is appropriate in the final rulemaking. One further comment on this section suggested the removal of the reference to the Wilderness Preservation System or wilderness study areas in the proposed rulemaking because they are not included in the Airport and Airways Improvement Act. It is true that the Act does not make reference to the Wilderness Preservation System or wilderness study areas, but the Congress has provided statutory protection for areas included in the Wilderness Preservation System and wilderness study areas. This provision of the proposed rulemaking, which has been continued by the final rulemaking, makes it clear that public lands included in the Wilderness Preservation System and wilderness study areas are not available for conveyance for airport purposes.

Several comments suggested that the final rulemaking amend § 2641.3 to incorporate the notice of realty action as the form of notice for this part and that the notice allow for segregation of the lands covered by the application if requested by the Administrator of the Federal Aviation Administration. The final rulemaking has adopted the notice of realty action, which is used as the form of notice by the Bureau of Land Management for lands transactions that require notice. In addition, the final rulemaking amends this section to authorize the segregation of the lands covered by an application for a period of one year or until the conveyance document is issued, whichever occurs first.

It was pointed out by the comments that the final sentence of section 2641.4 of the proposed rulemaking was incomplete. The final rulemaking has added the word "shall" to complete the sentence.

Needed editorial and grammatical corrections have been made.

The principal author of this final rulemaking is Gary Rowe, Division of Lands, assisted by the staff of the Office of Legislation and Regulatory Management, all of the Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

There are no information collection requirements contained in this final rulemaking which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 2640

Administrative practice and procedure, Airports, Public lands—grants.

Under the authority of section 516 of the Airport and Airways Improvement Act of September 3, 1982 (49 U.S.C. 2215), Subparts 2640 and 2641, Part 2640,

Group 2600, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations are amended as set out below.

Dated: July 1, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

Part 2640 consisting of Subparts 2640 and 2641, is revised to read:

PART 2640—FAA AIRPORT GRANTS

Subpart 2640—Airport and Airway Improvement Act of September 3, 1982

Sec.
2640.0-1 Purpose.
2640.0-3 Authority.
2640.0-5 Definitions.
2640.0-7 Cross reference.

Subpart 2641—Procedures

2641.1 Request by Administrator for conveyance of property interest.
2641.2 Action on request.
2641.3 Publication and payment.
2641.4 Approval of conveyance.
2641.5 Reversion.

Authority: Section 516, Airport and Airway Improvement Act of 1982 (49 U.S.C. 2215).

Subpart 2640—Airport and Airway Improvement Act of September 3, 1982

§ 2640.0-1 Purpose.

This subpart sets forth procedures for the issuance of conveyance documents for lands under the jurisdiction of the Department of the Interior to public agencies for use as airports and airways.

§ 2640.0-3 Authority.

Section 516 of the Airport and Airway Improvement Act of September 3, 1982 (49 U.S.C. 2215).

§ 2640.0-5 Definitions.

As used in this subpart, the term:

(a) "Act" means section 516 of the Airport and Airway Improvement Act of September 3, 1982 (49 U.S.C. 2215).

(b) "Secretary" means the Secretary of the Interior.

(c) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(d) "Administrator" means the person authorized by the Secretary of Transportation to administer the Act.

(e) "Applicant" means any public agency as defined in § 153.3 of title 14 of the Code of Federal Regulations, which, either individually or jointly with other such public agencies, submits to the Administrator an application requesting that lands or interests in lands under the jurisdiction of the Department of the Interior be conveyed to such applicant under the Act.

(f) "Property interest" means the title to or any other interest in lands or any easement through or other interest in air space.

(g) "Conveyance document" means a patent, deed or similar instrument which transfers title to lands or interests in lands.

§ 2640.0-7 Cross reference.

The regulations of the Federal Aviation Administration under the Act are found in 14 CFR Part 153.

Subpart 2641—Procedures

§ 2641.1 Request by Administrator for conveyance of property interest.

Each request by the Administrator in behalf of the applicant for conveyance of a property interest in lands under the jurisdiction of the Department of the Interior shall be filed with the State Office of the Bureau of Land Management having jurisdiction of the lands or interests in lands in duplicate, and shall contain the following:

(a) A copy of the application filed by the requesting public agency with the Administrator.

(b) A description of the lands or interests in lands, if surveyed, by legal subdivisions, specifying section, township, range, meridian and State. Unsurveyed lands shall be described by metes and bounds with a tie to a corner of the public-land surveys if within two miles; otherwise a tie shall be made to some prominent topographic feature and the approximate latitute and longitude shall be provided.

§ 2641.2 Action on request.

(a) Upon receipt of the request from the Administrator, the authorized officer shall determine whether the requested conveyance is inconsistent with the needs of the Department of the Interior, or any agency thereof, and shall notify the Administrator of the determination within 4 months after receipt of the request. On determining that the conveyance is not inconsistent with the needs of the Department of the Interior, the authorized officer also shall determine what, if any, convenants, terms, conditions and reservations should be included in the conveyance, if made. Any conveyance shall be made subject to valid existing rights of record, and to those disclosed as a result of publication or otherwise.

(b) Unless otherwise specifically provided by law, no conveyance shall be made of Federal lands within any national park, national monument, national recreation area, or similar area under the administration of the National Park Service; within any unit of the National Wildlife Refuge System or similar area under the jurisdiction of the United States Fish and Wildlife Service; within any area designated part of the National Wilderness Preservation. System or any area designated as a wilderness study area; or within any national forest or Indian reservation.

(c) The applicant shall, upon request by the authorized officer, submit a deposit in an amount determined by the authorized officer, to cover the administrative costs of processing the application, including the cost of survey, if one is necessary, and issuing of a document of conveyance. No document of conveyance shall be issued for unsurveyed lands. The processing of applications under this part shall be accomplished without any expense to the Bureau of Land Management.

(d) Each applicant also shall pay the cost of publication of a notice in the Federal Register and in a newspaper of general circulation in the area in which the lands are located.

§ 2641.3 Publication and payment.

(a) Prior to issuance of a conveyance document, the authorized officer shall publish a notice of realty action in the Federal Register and in a newspaper of general circulation in the area of the lands to be conveyed. The notice shall identify the lands proposed for conveyance and contain the terms, covenants, conditions and reservations to be included in the conveyance document. The notice shall provide public comment period of 45 days from the date of publication in the Federal Register. Comments shall be sent to the Bureau of Land Management office issuing the notice.

(b) The notice of realty action may segregate the lands or interests in lands to be conveyed to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the notice of realty action shall terminate either upon the issuance of a document of conveyance or 1 year after the date of publication, whichever occurs first.

(c) The determination concerning the granting or denial of an application shall be sent by the authorized officer to the applicant and to any party who commented on the application.

(d) The authorized officer shall advise the applicant whether any balance is due on the payments required of the applicant and of the time within which payment shall be made. Failure to pay the required amount within the allotted time shall constitute grounds for

rejection of the application. If the applicant has deposited with the authorized officer an amount in excess of the payments required, the authorized officer shall so advise the applicant and return the excess payment.

§ 2641.4 Approval of conveyance.

(a) Each conveyance document shall contain appropriate covenants, terms, conditions and reservations requested by the Administrator, and those required for protection of the Department of the Interior or any agency thereof.

(b) Upon receipt of the payment required by §§ 2641.2 (c) and (d) of this title and after consideration of comments received, the authorized officer shall make a decision upon the application. If the decision is to make a conveyance, the authorized officer shall send the conveyance document to the Attorney General of the United States for consideration. Upon approval by the Attorney General, the authorized officer shall issue the conveyance document.

§ 2641.5 Reversion.

A conveyance shall be made only on the condition that, at the option of the Administrator, the property interest conveyed shall revert to the United States in the event that the lands in question are not developed for airport or airway purposes or are used in a manner inconsistent with the terms of the conveyance. If only a part of the property interest conveyed is not developed for airport purposes, or is used in a manner inconsistent with the terms of the conveyance, only that particular part shall, at the option of the Administrator, revert to the United States.

[FR Doc. 86-16775 Filed 7-25-86; 8:45 am]
BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 85-388; RM 5167]

Amendment of the Rules Concerning Rural Cellular Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has determined that the rules governing the filing and processing of cellular applications should be modified for Rural Service Areas (RSAs), those areas outside defined Metropolitan Statistical Areas (MSAs) and New England County Metropolitan Areas (NECMAs). Specifically, the Commission has established defined boundaries proposed by United TeleSpectrum, Inc. (United) subject to future modification, raised the antenna height-power limitations, prescribed application rules and coverage requirements and prohibited coverage extensions beyond the defined areas. This action is taken in response to comments received as a result of our Notice of Proposed Rulemaking, published January 6, 1986, 51 FR 405.

EFFECTIVE DATE: August 25, 1986.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Tatum, Mobile Services Division, Common Carrier Bureau (202) 632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, CC Docket 85-388, Adopted June 26, 1986, and released July 18, 1986.

The Complete text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The Complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order:

1. On December 17, 1985, the Commission adopted a Notice of Proposed Rulemaking (Notice) which solicited comments concerning a change in the cellular filing rules for Rural Service Areas (RSAs). The Commission carefully considered the comments and adopted a First Report and Order which establishes fixed boundaries for RSA areas, and tentatively adopts the boundary lines drawn by United. (A copy of United's county lists and maps depicting the proposed RSA boundaries have been placed in the public file for this Docket, FCC Dockets Branch, Room 230, 1919 M Street NW., Washington, DC)

2. The Commission notes, however, that interested parties may file suggestions for modifications to the United plan within 30 days of publication of this summary. Once these modification proposals are filed, interested parties will have 15 days to file their response or opposition to the proposed modifications. The modification proposals will be reviewed by Commission staff and unopposed modification plans will generally be made to the United plan. Where a modification is contested, the parties will have 15 days from the date the oppositions are due for filing to effect a settlement with parties who challenge their proposed modifications or make conflicting suggestions. In the event no settlement is reached, the Commission will generally follow the United plan without modifications unless it is determined that the public interest would be better served otherwise. The Commission notes that definitive RSA boundary lines and a filing timetable will be announced in a future Public Notice. Under this order, the RSAs have been grouped together by states into five filing blocks and these will be filed at roughly two-month intervals.

3. Applications will be subject to the same filing standards set forth for MSA markets 121-305 with a few minor exceptions. First, the Commission has eliminated the need to initially file an original paper application. Instead, three exact microfiche copies of the original application and microfiche jackets including a label clearly identifying the applicant's name, market number, market name and frequency block designation will be required. Tentative lottery selectees will have 15 days after Public Notice of their selection to supply a properly executed paper copy original. Secondly, the date for filing amendments required by § 1.65 of the Commission's rules has been changed from 14 to 30 days from the date of Public Notice of the lottery results for all RSA applicants. Thirdly, extensions beyond RSA boundaries will no longer be allowed. Finally, the antenna height-power limitations have been changed. In a related matter, the Commission also denied the developmental application filed by Central Nebraska Cellular Systems.

4. *Final Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. section 605(b) it is certified that the final rule will not have a significant impact on a substantial number of small entities. This action is expected to promote efficient and expedient authorization of cellular licenses in the RSAs and lower the administrative costs associated with the process of granting licenses in these RSAs.

5. Authority for this rulemaking is contained in sections 1, 4(i) and (j), 301, 303 and 309 of the Communications Act of 1934, as amended, and section 553 of the Administrative Procedure Act.

Ordering Clause

6. It is ordered, That the application of Central Nebraska Cellular Systems, File No. 27979-CL-P-86, is hereby denied.

A2585

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2640

[Circular No. 2585]

Federal Aviation Administration Airport Grants; Amendments to Comply with Statutory Changes

Under the authority of section 516 of the Airport and Airways Improvement Act of September 3, 1982 (49 U.S.C. 2215), Subparts 2640 and 2641, Part 2640, Group 2600, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations are amended as set out below.

Part 2640 consisting of Subparts 2640 and 2641, is revised to read:

PART 2640—FAA AIRPORT GRANTS

Subpart 2640—Airport and Airway Improvement Act of September 3, 1982

Sec.
2640.0–1 Purpose.
2640.0–3 Authority.
2640.0–5 Definitions.
2640.0–7 Cross reference.

Subpart 2641—Procedures

2641.1 Request by Administrator for conveyance of property interest.
2641.2 Action on request.
2641.3 Publication and payment.
2641.4 Approval of conveyance.
2641.5 Reversion.

Authority: Section 516, Airport and Airway Improvement Act of 1982 (49 U.S.C. 2215).

Subpart 2640—Airport and Airway Improvement Act of September 3, 1982

§ 2640.0–1 Purpose.

This subpart sets forth procedures for the issuance of conveyance documents for lands under the jurisdiction of the Department of the Interior to public agencies for use as airports and airways.

§ 2640.0–3 Authority.

Section 516 of the Airport and Airway Improvement Act of September 3, 1982 (49 U.S.C. 2215).

§ 2640.0–5 Definitions.

As used in this subpart, the term:

(a) "Act" means section 516 of the Airport and Airway Improvement Act of September 3, 1982 (49 U.S.C. 2215).

(b) "Secretary" means the Secretary of the Interior.

(c) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(d) "Administrator" means the person authorized by the Secretary of Transportation to administer the Act.

(e) "Applicant" means any public agency as defined in § 153.3 of title 14 of the Code of Federal Regulations, which, either individually or jointly with other such public agencies, submits to the Administrator an application requesting that lands or interests in lands under the jurisdiction of the Department of the Interior be conveyed to such applicant under the Act.

(f) "Property interest" means the title to or any other interest in lands or any easement through or other interest in air space.

(g) "Conveyance document" means a patent, deed or similar instrument which transfers title to lands or interests in lands.

§ 2640.0–7 Cross reference.

The regulations of the Federal Aviation Administration under the Act are found in 14 CFR Part 153.

Subpart 2641—Procedures

§ 2641.1 Request by Administrator for conveyance of property interest.

Each request by the Administrator in behalf of the applicant for conveyance of a property interest in lands under the jurisdiction of the Department of the Interior shall be filed with the State Office of the Bureau of Land Management having jurisdiction of the lands or interests in lands in duplicate, and shall contain the following:

(a) A copy of the application filed by the requesting public agency with the Administrator.

(b) A description of the lands or interests in lands, if surveyed, by legal subdivisions, specifying section, township, range, meridian and State. Unsurveyed lands shall be described by metes and bounds with a tie to a corner of the public-land surveys if within two miles; otherwise a tie shall be made to some prominent topographic feature and the approximate latitute and longitude shall be provided.

§ 2641.2 Action on request.

(a) Upon receipt of the request from the Administrator, the authorized officer shall determine whether the requested conveyance is inconsistent with the needs of the Department of the Interior, or any agency thereof, and shall notify the Administrator of the determination within 4 months after receipt of the request. On determining that the conveyance is not inconsistent with the needs of the Department of the Interior, the authorized officer also shall determine what, if any, convenants, terms, conditions and reservations should be included in the conveyance, if made. Any conveyance shall be made subject to valid existing rights of record, and to those disclosed as a result of publication or otherwise.

(b) Unless otherwise specifically provided by law, no conveyance shall be made of Federal lands within any national park, national monument, national recreation area, or similar area under the administration of the National Park Service; within any unit of the National Wildlife Refuge System or similar area under the jurisdiction of the United States Fish and Wildlife Service; within any area designated part of the National Wilderness Preservation. System or any area designated as a wilderness study area; or within any national forest or Indian reservation.

(c) The applicant shall, upon request by the authorized officer, submit a deposit in an amount determined by the authorized officer, to cover the administrative costs of processing the application, including the cost of survey, if one is necessary, and issuing of a document of conveyance. No document of conveyance shall be issued for unsurveyed lands. The processing of applications under this part shall be accomplished without any expense to the Bureau of Land Management.

(d) Each applicant also shall pay the cost of publication of a notice in the **Federal Register** and in a newspaper of general circulation in the area in which the lands are located.

§ 2641.3 Publication and payment.

(a) Prior to issuance of a conveyance document, the authorized officer shall publish a notice of realty action in the **Federal Register** and in a newspaper of general circulation in the area of the lands to be conveyed. The notice shall identify the lands proposed for

Published in 51 F.R. 26893, July 28, 1986 - Effective August 27, 1986

conveyance and contain the terms, covenants, conditions and reservations to be included in the conveyance document. The notice shall provide public comment period of 45 days from the date of publication in the **Federal Register**. Comments shall be sent to the Bureau of Land Management office issuing the notice.

(b) The notice of realty action may segregate the lands or interests in lands to be conveyed to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the notice of realty action shall terminate either upon the issuance of a document of conveyance or 1 year after the date of publication, whichever occurs first.

(c) The determination concerning the granting or denial of an application shall be sent by the authorized officer to the applicant and to any party who commented on the application.

(d) The authorized officer shall advise the applicant whether any balance is due on the payments required of the applicant and of the time within which payment shall be made. Failure to pay the required amount within the allotted time shall constitute grounds for rejection of the application. If the applicant has deposited with the authorized officer an amount in excess of the payments required, the authorized officer shall so advise the applicant and return the excess payment.

§ 2641.4 Approval of conveyance.

(a) Each conveyance document shall contain appropriate covenants, terms, conditions and reservations requested by the Administrator, and those required for protection of the Department of the Interior or any agency thereof.

(b) Upon receipt of the payment required by §§ 2641.2 (c) and (d) of this title and after consideration of comments received, the authorized officer shall make a decision upon the application. If the decision is to make a conveyance, the authorized officer shall send the conveyance document to the Attorney General of the United States for consideration. Upon approval by the Attorney General, the authorized officer shall issue the conveyance document.

§ 2641.5 Reversion.

A conveyance shall be made only on the condition that, at the option of the Administrator, the property interest conveyed shall revert to the United States in the event that the lands in question are not developed for airport or airway purposes or are used in a manner inconsistent with the terms of the conveyance. If only a part of the property interest conveyed is not developed for airport purposes, or is used in a manner inconsistent with the terms of the conveyance, only that particular part shall, at the option of the Administrator, revert to the United States.

Dated: July 1, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 86-16775 Filed 7-25-86; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2510

[AA-320-06-4211-02; Circular No. 2586]

Removal of Provisions Covering Entries for Enlarged Homesteads and Reclamation Homesteads

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 2510, Group 2500, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 2510—[AMENDED]

1. An authority citation for Part 2510 is added to read:

Authority: 43 U.S.C. 161, 43 U.S.C. 162, 43 U.S.C. 163, 43 U.S.C. 164, 43 U.S.C. 166, 43 U.S.C. 167, 43 U.S.C. 168, 43 U.S.C. 169, 43 U.S.C. 185, 43 U.S.C. 201, 43 U.S.C. 231, 43 U.S.C. 1201.

2. Part 2510 is amended by removing Subparts 2514 and 2515 in their entireties.

James E. Cason,
Deputy Assistant Secretary of the Interior.
September 24, 1986.

[FR Doc. 86-22021 Filed 9-29-86; 8:45 am]

Published in 51 F.R. 34602, September 30, 1986 - Effective September 30, 1986

#2586
#2587

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2510

[AA-320-06-4211-02; Circular No. 2586]

Removal of Provisions Covering Entries for Enlarged Homesteads and Reclamation Homesteads

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking removes the existing regulations covering Enlarged Homesteads—43 CFR Subpart 2514 and Reclamation Homesteads—43 CFR Subpart 2515. These provisions are no longer needed because section 702 of the Federal Land Policy and Management Act of 1976 repealed the pertinent homestead entry authorities, except those related to Alaska, including, as to enlarged homesteads, the Act of February 19, 1909, as amended, and the Act of June 17, 1910, as amended. Both subparts were retained after the enactment of the Federal Land Policy and Management Act to facilitate the processing of homestead entry applications pending at that time.

EFFECTIVE DATE: September 30, 1986.

ADDRESS: Any inquiries or suggestions should be sent to: Director (320), Bureau of Land Management, Room 3643, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gary L. Rowe, (202) 343-8693.

SUPPLEMENTARY INFORMATION: This final rulemaking reflects the administrative action of removing from the existing regulations provisions whose statutory authority has been repealed. Therefore, this document is published as a final rulemaking with an effective date as of the date of publication. The provisions being removed are those covering entries for enlarged homesteads authorized by the Act of February 19, 1909, as amended (43 U.S.C. 218), and the Act of June 17, 1910, as amended (43 U.S.C. 219), contained in 43 CFR Subpart 2514. Also being removed are provisions contained in 43 CFR Subpart 2515 covering entries for homesteads in reclamation areas, which were allowed under section 3 of the Act of June 17, 1902 (43 U.S.C. 416, 432). As to Subpart 2514, the enlarged homestead laws were repealed by the Federal Land Policy and Management Act. As to Subpart 2515, the general homestead laws were repealed by the Federal Land Policy and Management Act and, consequently, new applications for reclamation homesteads no longer could be filed after the passage of the Act in 1976. The regulatory provisions were retained to facilitate the processing of applications that were pending at the time the statutes were repealed. Retention was also necessary to aid in processing of applications in Alaska. All pending actions have been completed; no new applications have been filed in Alaska since 1980, and as of October 21, 1986, the authority for filing such applications expires; and, therefore, the regulations are no longer needed. This administrative action removes the regulations in these subparts from the Code of Federal Regulations. To the extent that any question may exist or arise concerning rights associated with the regulations being removed, earlier editions of the Code of Federal Regulations will remain available to assist in interpretation.

The principal author of this final rulemaking is Gary L. Rowe, Division of Lands, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

There are no information collection requirements contained in this final rulemaking requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 2510

Original homesteads, Additional entries, Second entries, Enlarged homesteads, Reclamation homesteads.

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 2510, Group 2500, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

James E. Cason,

Deputy Assistant Secretary of the Interior.

September 24, 1986.

PART 2510—[AMENDED]

1. An authority citation for Part 2510 is added to read:

Authority: 43 U.S.C. 161, 43 U.S.C. 162, 43 U.S.C. 163, 43 U.S.C. 164, 43 U.S.C. 166, 43 U.S.C. 167, 43 U.S.C. 168, 43 U.S.C. 169, 43 U.S.C. 185, 43 U.S.C. 201, 43 U.S.C. 231, 43 U.S.C. 1201.

2. Part 2510 is amended by removing Subparts 2514 and 2515 in their entireties.

[FR Doc. 86-22021 Filed 9-29-86; 8:45 am]

BILLING CODE 4310-84-M

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43 CFR PART 3180

[AA-630-06-4111-02; Circular No. 2587]

Onshore Oil and Gas Unit Agreements; Unproven Areas; Technical Amendments

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking will amend the regulations in 43 CFR Part 3180—Onshore Oil and Gas Unit Agreements—Unproven Areas, by correcting errors in the final rulemaking on this part that was published in the Federal Register on June 10, 1983. All of these errors are non-substantive and their correction is a non-substantive action that will clarify the regulations.

EFFECTIVE DATE: September 30, 1986.

ADDRESS: Inquiries or suggestions should be addressed to: Director (630), Bureau of Land Management, Room 5647, Main Interior Bldg., 1800 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Stephen H. Spector, (202) 653-2147

or

Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION: The existing regulations in 43 CFR Part 3180 were published in the Federal Register on June 10, 1983 (48 FR 26763) as 30 CFR Part 226. The regulations were redesignated as 43 CFR Part 3180 by publication of a redesignation notice in the Federal Register on August 12, 1983 (48 FR 36582). In the period since the publication of the existing regulations and their redesignation, the Bureau of Land Management has been notified of errors in the text of the regulations. This final rulemaking will correct those errors prior to the printing of the next edition of Title 43 of the Code of Federal Regulations.

This final rulemaking does not make any substantive changes in the existing regulations nor will it adversely impact any parties to unit agreements executed since July 11, 1983, the effective date of the existing regulations. As a matter of

fact, many operators who have entered into unit agreements using the model contained in 43 CFR 3186.1 have made many of the corrections which will be made by this final rulemaking.

The changes made by this final rulemaking are technical corrections and are not substantive. Accordingly, pursuant to 5 U.S.C. 553(b), it has been determined that it is necessary to issue these changes as a proposed rulemaking for public review and comment. For the same reason and because many of the corrections have been obvious to the using public since the issuance of the existing regulations in 1983, it has been determined that pursuant to 5 U.S.C. 553(d) there is good cause to make this final rulemaking effective upon its publication in the **Federal Register**.

The principal author of this final rulemaking is Stephen H. Spector, Division of Fluid Mineral Operations, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601).

The corrections made by this final rulemaking will eliminate some obvious ambiguities in the existing regulations, thereby making the regulations more understandable and more readily usable by the public. The corrections will benefit all users equally.

This final rulemaking contains no information collection requirements that must be approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Part 3180

Government contracts, Oil and gas reserves, Public lands—mineral resources.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), Part 3180, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

J. Steven Griles,

Assistant Secretary of the Interior.

September 8, 1986.

PART 3180—[AMENDED]

1. The authority citation for Part 3180 is revised to read as follows:

Authority: 30 U.S.C. 181, 189, 226(e), 226(j).

§ 3180.0-5 [Amended]

2. Section 3180.0-5 is amended by:

a. Amending the term "Participating Area" by removing from where it appears the phrase "productive in paying quantities" and replacing it with the phrase "productive of unitized substances in paying quantities"; and

b. Amending the term "Unitized land" by removing from where it appears the phrase "lands within" and replacing it with the phrase "lands and formations within".

§ 3183.1 [Amended]

3. Section 3183.1 is amended by removing from where it appears the word "should" and replacing it with the word "shall".

§ 3183.6 [Amended]

4. Section 3183.6 is amended by removing from where it appears the phrase "furnished by that purpose" and replacing it with the phrase "furnished for that purpose".

§ 3186.1 [Amended]

5. Section 3186.1 is amended by:

a. Amending the second "WHEREAS" clause by removing from where it appears the phrase "representatives to units with each other, or jointly or separately with others, in collectively adopting and operating a unit plan of development" and replacing it with the phrase "representatives to unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit plan of development";

b. Amending section 2(a), Unit Operator, by removing from where it appears the word "therefore" and replacing it with the word "therefor";

c. Amending section 5, Resignation or Removal of Unit Operator, by removing from where it appears in the fifth paragraph the word "elected";

d. Amending section 10, Plan of Further Development and Operation, by removing from where it appears in the first paragraph the word "DMM" and replacing it with the phrase "authorized officer";

e. Amending section 11, Participation After Discovery, by removing from where it appears in the second paragraph the phrase "area productive of unitized substances known or reasonably proved to be productive in paying quantities" and replacing it with the phrase "area known or reasonably proved to be productive of unitized substances in paying quantities" and by removing from where it appears in the fourth paragraph the phrase "paying quantities and inclusion in a participating area of the land on which it is situated in a participating area" and replacing it with the phrase "paying quantities and inclusion in a participating area of the land on which it is situated";

f. Amending section 13, Development or Operation of Nonparticipating Land or Formations, by removing from where it appears in the third paragraph the phrase "owner that obtains production" and replacing it with the phrase "owner obtains production";

g. Amending section 15, Rental Settlement, by removing from where it appears the phrase "to relieve the leases of any land from their respective lessees obligations" and replacing it with the phrase "to relieve lessees of any land from their respective lease obligations";

h. Amending section 18, Leases and Contracts Conformed and Extended, by removing from where it appears in the introductory paragraph the phrase "producing, rental minimum royalty," and replacing it with the phrase "producing, rental, minimum royalty,", by removing from where it appears in paragraph (b) the phrase "upon any at the time, such lease shall be extended for 2 years, and so tract" and replacing it with the phrase "upon any tract" and by removing from where it appears in paragraph (e) the phrase "established in paying quantities under" and replacing it with the phrase "established under";

i. Amending section 20, Effective Date and Term, by removing from where it appears in paragraph (c) the phrase "diligent drilling operations to restore production or new production are not in progress or reworking within 60 days" and replacing it with the phrase "diligent drilling or reworking operations to restore production or new production are not in progress within 60 days" and by removing from where it appears in paragraph (d) the word "'accordance";

j. Amending section 22, Appearances, by removing from where it appears at the beginning of the section the phrase "Unit Operators" and replacing it with the phrase "The Unit Operator";

k. Amending the Certification—Determination section by removing from the introductory paragraph the phrase

the appropriate (Name and Title of authorized officer, BLM) Service" and replacing it with the phrase "(the appropriate Name and Title of the authorized officer, BLM)" and by removing from where it appears in paragraph C the phrase "producing, rental minimum royalty, and royalty requirements of all Federal lease" and replacing it with the phrase "producing, rental, minimum royalty, and royalty requirements of all Federal leases";

l. Amending Exhibit A by removing from where it appears in section 35 of the exhibit the date "7-30-81" and replacing it with the date "7-31-81"; and

m. Amending Exhibit B by removing from where it appears in the listing for number 2, section 35, the date "7-30-81" and replacing it with the date "7-31-81"; by adding to the listing for number 4, section 27, immediately under the phrase "Deer Oil Co. 50%." the phrase "Doe Oil Co. 30%." and the phrase "Able Drilling Co. 20%.", by adding to the listing for number 4, section 33, immediately under the phrase "Deer Oil Co. 50%." the phrase "Doe Oil Co. 30%." and the phrase "Able Drilling Co. 20%.", by removing from where it appears in the listing for number 5, section 26, the phrase "W-52780" and replacing it with the phrase "W-52780, 12-31-85", by removing from where it appears in the listing following number 6 the phrase "6 Federal tracts 7,047.30 acres or 68.76% of the unit area." and replacing it with the phrase "6 Federal tracts totalling 7,047.30 acres or 68.76018% of the unit area.", by removing from where it appears in the listing for number 7, section 16, the phrase "65-67430, 8-31-85" and replacing it with the phrase "78-620, 6-30-88", by removing from where it appears in the listing following number 7 the phrase "1 State tract 1,280.60 acres or 12.49% of unit area." and replacing it with the phrase "1 State tract totalling 1,280.60 acres or 12.49476% of the unit area.", by removing from where it appears in the listing for number 8, section 13, the date "8-2-74" and replacing with the date "5-31-82", by removing from where it appears in the listing for number 9, section 22, the date "9-15-76" and replacing it with the date "5-31-82", by removing from where it appears in the listing for number 10, section 34, the date "6-1-75" and replacing it with the date "6-30-82" and by removing from where it appears in the listing following number 10 the phrase "3 Patented tracts 1,921.20 acres or 18.75% of unit area." and replacing it with the phrase "3 Patented tracts totalling 1,921.20 acres or 18.74506% of the unit area.".

§ 3186.3 [Amended]

6. Section 3186.3 is amended by removing from where it appears the phrase "approve a unit agreement" and replacing it with the phrase "approved a unit agreement".

[FR Doc. 86-22022 Filed 9-29-86; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 2, 3, 5, 6, 8, 9, 11, 67, 68, 77, 80, 81, 82, 83, 205, 306, 325, 333, 350, 351

Organizational Changes, Erroneous Citations, etc.; Technical Corrections

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This regulation makes a number of technical corrections to FEMA regulations to reflect organizational changes, erroneous citations and matters of a nonsubstantive nature.

EFFECTIVE DATE: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: William L. Harding, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, telephone (202) 646-4096.

Accordingly, Title 44, Code of Federal Regulations is amended as follows:

PART 2—ORGANIZATION, FUNCTIONS, AND DELEGATION OF AUTHORITY

1. The authority citation for Part 2 continues to read:

Authority: 5 U.S.C. 552; Reorganization Plan No. 3 of 1978; E.O. 12127; E.O. 12148.

2. Section 2.81 is amended by adding in chronological sequence to the table the following OMB numbers:

§ 2.81 OMB control numbers assigned to information collections.

44 CFR Part or section when identified or described	Current OMB control No.
14	3067-0149
80, 81, and 83	3067-0051
205.54	3067-0163
205.59	3067-0166

3. Section 2.81 is amended by removing in the table CFR Part 360 and OMB Control No. 067-0100.

PART 3—STANDARDS OF CONDUCT

1. The authority citation for Part 3 is revised to read:

Authority: Title II of Ethics in Government Act of 1987, 5 U.S.C. App.; 5 CFR Parts 735, 737; E.O. 11222.

§ 3.15 [Amended]

2. Section 3.15(c) is amended by removing 31 U.S.C. 638a(c) and adding in its place 31 U.S.C. 1344, 1349.

PART 5—PRODUCTION OR DISCLOSURE OF INFORMATION

1. The authority citation for Part 5 continues to read:

Authority: 5 U.S.C. 552; Reorganization Plan No. 3 of 1978; and E.O. 12127.

§ 5.3(d) [Amended]

2. In § 5.3(d) remove "Director, Office of Public Affairs" and add "FOIA/Privacy Act Specialist" in place thereof.

§ 5.54 [Amended]

3. In § 5.54(a)(6) remove "Executive Administrator" and add "Chief of Staff" in place thereof.

PART 6—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

1. The authority citation for Part 6 is revised to read:

Authority: 5 U.S.C. 552a; Reorganization Plan No. 3 of 1978; and E.O. 12127.

§ 6.2 [Amended]

2. In § 6.2(o) remove "Director of Office of Public Affairs" and add "FOIA/Privacy Act Specialist" in place thereof.

§ 6.33 [Amended]

3. In § 6.33(b)(6) remove "Executive Administrator" and add "Chief of Staff" in place thereof.

§ 6.70 [Amended]

4. In § 6.70(a), (b), and (d) remove Director of the Office of Management and Budget" and add in place thereof "Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget" in place thereof.

5. In § 6.70(d) remove "OMB Circular A-108, and Transmittal Memorandum 1 and 3" and add "OMB Circular A-130" in place thereof.

PART 8—NATIONAL SECURITY INFORMATION

1. The authority citation for Part 8 continues to read:

Authority: Reorganization Plan No. 3 of 1978, Executive Orders 12148 and 12356.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2510

[AA-320-06-4211-02; Circular No. 2588]

Removal of Provisions Covering Entries for Enlarged Homesteads and Reclamation Homesteads

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 2510, Group 2500, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 2510—[AMENDED]

1. An authority citation for Part 2510 is added to read:

Authority: 43 U.S.C. 161, 43 U.S.C. 162, 43 U.S.C. 163, 43 U.S.C. 164, 43 U.S.C. 166, 43 U.S.C. 167, 43 U.S.C. 168, 43 U.S.C. 169, 43 U.S.C. 185, 43 U.S.C. 201, 43 U.S.C. 231, 43 U.S.C. 1201.

2. Part 2510 is amended by removing Subparts 2514 and 2515 in their entireties.

James E. Cason,
Deputy Assistant Secretary of the Interior.
September 24, 1986.

[FR Doc. 86-22021 Filed 9-29-86; 8:45 am]

Published in 51 F.R. 34602, September 30, 1986 - Effective September 30, 1986

BUREAU OF LAND MANAGEMENT
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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR PART 3180

[AA-630-06-4111-02; Circular No. 2587]

Onshore Oil and Gas Unit Agreements, Unproven Areas; Technical Amendments

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), Part 3180, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 3180—[AMENDED]

1. The authority citation for Part 3180 is revised to read as follows:

Authority: 30 U.S.C. 181, 189, 226(e), 226(j).

§ 3180.0-5 [Amended]

2. Section 3180.0-5 is amended by:

a. Amending the term "Participating Area" by removing from where it appears the phrase "productive in paying quantities" and replacing it with the phrase "productive of unitized substances in paying quantities"; and

b. Amending the term "Unitized land" by removing from where it appears the phrase "lands within" and replacing it with the phrase "lands and formations within".

§ 3183.1 [Amended]

3. Section 3183.1 is amended by removing from where it appears the word "should" and replacing it with the word "shall".

§ 3183.6 [Amended]

4. Section 3183.6 is amended by removing from where it appears the phrase "furnished by that purpose" and replacing it with the phrase "furnished for that purpose".

§ 3186.1 [Amended]

5. Section 3186.1 is amended by:

a. Amending the second "WHEREAS" clause by removing from where it appears the phrase "representatives to units with each other, or jointly or separately with others, in collectively adopting and operating a unit plan of development" and replacing it with the phrase "representatives to unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit plan of development";

b. Amending section 2(a), Unit Operator, by removing from where it appears the word "therefore" and replacing it with the word "therefor";

c. Amending section 5, Resignation or Removal of Unit Operator, by removing from where it appears in the fifth paragraph the word "elected";

d. Amending section 10, Plan of Further Development and Operation, by removing from where it appears in the first paragraph the word "DMM" and replacing it with the phrase "authorized officer";

e. Amending section 11, Participation After Discovery, by removing from where it appears in the second paragraph the phrase "area productive of unitized substances known or reasonably proved to be productive in paying quantities" and replacing it with the phrase "area known or reasonably proved to be productive of unitized substances in paying quantities" and by removing from where it appears in the fourth paragraph the phrase "paying quantities and inclusion in a participating area of the land on which it is situated in a participating area" and replacing it with the phrase "paying quantities and inclusion in a participating area of the land on which it is situated";

f. Amending section 13, Development or Operation of Nonparticipating Land or Formations, by removing from where it appears in the third paragraph the phrase "owner that obtains production" and replacing it with the phrase "owner obtains production";

g. Amending section 15, Rental Settlement, by removing from where it appears the phrase "to relieve the leases of any land from their respective lessees obligations" and replacing it with the phrase "to relieve lessees of any land from their respective lease obligations";

h. Amending section 18, Leases and Contracts Conformed and Extended, by removing from where it appears in the introductory paragraph the phrase "producing, rental minimum royalty," and replacing it with the phrase "producing, rental, minimum royalty,", by removing from where it appears in paragraph (b) the phrase "upon any at the time, such lease shall be extended for 2 years, and so tract" and replacing it with the phrase "upon any tract" and by removing from where it appears in paragraph (e) the phrase "established in paying quantities under" and replacing it with the phrase "established under";

i. Amending section 20, Effective Date and Term, by removing from where it appears in paragraph (c) the phrase "diligent drilling operations to restore production or new production are not in progress or reworking within 60 days" and replacing it with the phrase "diligent drilling or reworking operations to restore production or new production are not in progress within 60 days" and by removing from where it appears in paragraph (d) the word "'accordance";

j. Amending section 22, Appearances, by removing from where it appears at the beginning of the section the phrase "Unit Operators" and replacing it with the phrase "The Unit Operator";

k. Amending the Certification—Determination section by removing from the introductory paragraph the phrase "the appropriate (Name and Title of authorized officer, BLM) Service" and replacing it with the phrase "(the appropriate Name and Title of the authorized officer, BLM)" and by removing from where it appears in paragraph C the phrase "producing, rental minimum royalty, and royalty requirements of all Federal lease" and replacing it with the phrase "producing, rental, minimum royalty, and royalty requirements of all Federal leases";

l. Amending Exhibit A by removing from where it appears in section 35 of the exhibit the date "7-30-81" and replacing it with the date "7-31-81"; and

m. Amending Exhibit B by removing from where it appears in the listing for number 2, section 35, the date "7-30-81" and replacing it with the date "7-31-81"; by adding to the listing for number 4, section 27, immediately under the phrase "Deer Oil Co. 50%." the phrase "Doe Oil Co. 30%." and the phrase "Able

All changes reflected in the 1986 edition of Title 43 CFR.

Published in 51 F.R. 34602, September 30, 1986 - Effective September 30, 1986

Drilling Co. 20%.", by adding to the listing for number 4, section 33, immediately under the phrase "Deer Oil Co. 50%." the phrase "Doe Oil Co. 30%." and the phrase "Able Drilling Co. 20%.", by removing from where it appears in the listing for number 5, section 26, the phrase "W-52780" and replacing it with the phrase "W-52780, 12-31-85", by removing from where it appears in the listing following number 6 the phrase "6 Federal tracts 7,047.30 acres or 68.76% of the unit area." and replacing it with the phrase "6 Federal tracts totalling 7,047.30 acres or 68.76018% of the unit area.", by removing from where it appears in the listing for number 7, section 16, the phrase "65-67430, 8-31-85" and replacing it with the phrase "78-620, 6-30-88", by removing from where it appears in the listing following number 7 the phrase "1 State tract 1,280.60 acres or 12.49% of unit area." and replacing it with the phrase "1 State tract totalling 1,280.60 acres or 12.49476% of the unit area.", by removing from where it appears in the listing for number 8, section 13, the date "8-2-74" and replacing with the date "5-31-82", by removing from where it appears in the listing for number 9, section 22, the date "9-15-76" and replacing it with the date "5-31-82", by removing from where it appears in the listing for number 10, section 34, the date "6-1-75" and replacing it with the date "6-30-82" and by removing from where it appears in the listing following number 10 the phrase "3 Patented tracts 1,921.20 acres or 18.75% of unit area." and replacing it with the phrase "3 Patented tracts totalling 1,921.20 acres or 18.74506% of the unit area.".

§ 3186.3 [Amended]

6. Section 3186.3 is amended by removing from where it appears the phrase "approve a unit agreement" and replacing it with the phrase "approved a unit agreement".

J. Steven Griles,
Assistant Secretary of the Interior.
September 8, 1986.

[FR Doc. 86-22022 Filed 9-29-86; 8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[Circular No. 2588; AA-140-06-4830-11]

Application Procedures; Amendment of List of Addresses of State Offices

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 1201), Subpart 1821, Part 1820, Group 1800, Subchapter A, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 1820—[AMENDED]

Subpart 1821—Execution and Filing of Forms

1. The authority citation for Part 1820 continues to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

§ 1821.2-1 [Amended]

2. The portion of § 1821.2-1(d) beginning with the heading "State Office and Area of Jurisdiction" and ending after the address and jurisdiction of the Wyoming State Office, is amended by removing the paragraph beginning "Fairbanks District Office", footnote 1, and the diagram to which the footnote refers. The paragraph beginning "Alaska State Office" is revised to read as follows:

* * * * *

(d) * * *

Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513—Alaska

* * * * *

September 26, 1986.

Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 86-22216 Filed 9-30-86; 8:45 am]

Published in 51 F.R., October 1, 1986 - Effective October 1, 1986

II 2588

10. On page 31522, in the first column, the table is corrected by moving the State abbreviations for Regions 8 and 9 out of the "Urban" column and to the "Region" column under Regions 8 and 9.

11. On page 31523, in the second column, in the fourth line of the second full paragraph, add the following phrase after the word "deviations":

"beyond the geometric mean length of stay."

12. On page 31524, in the third column, remove the comma at the end of the first line and remove the words "including capital" in the second line. At the end of the third line, move the parenthesis to the beginning of the fourth line so that the fourth line is corrected to read "($13,500×.2561)=$19,914.24".

13. On page 31574, in Table 5, under the ARITHMETIC MEAN LOS, GEOMETRIC MEAN LOS, and OUTLIER THRESHOLD columns the values for DRGS 469 and 470 are corrected to read "0".

14. On page 31576, in the second column, in the revised surgical hierarchy for MDC 3, the DRG numbers for tonsillectomy and/or adenoidectomy procedures are corrected to read as follows: "Tonsillectomy and/or adenoidectomy only (DRGs 59 & 60). Tonsil and adenoid procedures except tonsillectomy and/or adenoidectomy only (DRGs 57 & 58)".

15. On page 31577, in the second column, in the revised surgical hierarchy for MDC 6, several DRG numbers were inadvertently omitted. Add "& DRG 156" to "Stomach, esophageal and duodenal procedures". Add "& DRG 163" to "Hernia procedures". Add "& DRG 171" to other digestive system operating room procedures.

16. On page 31580, in the second column, in the fifth line under the second indented point, codes "6830, 6840, and 6850" are corrected to read "683, 684, and 685".

17. On page 31594, in the second column, in the second paragraph under the first indented point, in the eighth line, the word "proposing" is corrected to read "implementing".

(Secs. 1102, 1122, 1871, and 1886 of the Social Security Act, as amended (42 U.S.C. 1302, 1320a-1, 1395hh, and 1395ww))

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance Program)

Dated: September 25, 1986.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-22160 Filed 9-30-86; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[Circular No. 2588; AA-140-06-4830-11]

Application Procedures; Amendment of List of Addresses of State Offices

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends 43 CFR Part 1820 to reflect the reorganization of the Bureau of Land Management in Alaska into 5 districts. It amends the list of State Office Addresses to remove the references to the Fairbanks District Office and to the separate addresses for Northern and Southern Alaska.

EFFECTIVE DATE: October 1, 1986.

ADDRESS: Any inquiries or suggestions should be sent to: Director (140), Bureau of Land Management, Room 5555 MIB, 1800 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Eleanor R. Schwartz, (202)-343-8735.

SUPPLEMENTARY INFORMATION: This final rulemaking reflects the administrative action of reorganizing the Bureau of Land Management in Alaska into 5 districts. Because of the Alaska reorganization it removes the reference to the Fairbanks District Office and the division of the State into 2 regions. It makes no other changes in filing requirements that are spelled out in Subpart 1821. Therefore, this amendment is published as a final rulemaking with the effective date shown above.

Within 90 days after the effective date of this rulemaking, the Alaska State Office will publish in the Federal Register a notice of the reorganization, setting forth the addresses of the new district offices and their areas of management jurisdiction. Also, as stated at the end of the list of addresses in § 1821.2-1, the new addresses may be obtained from the Alaska State Office or the Washington Office of the Bureau of Land Management.

The Department of the Interior has determined that because this rule is an administrative action, it is not a major rule for purposes of E.O. 12291, and neither an environmental impact analysis nor a regulatory flexibility analysis is required. There are no additional information collection requirements imposed by this final rulemaking.

List of Subjects in 43 CFR Part 1820

Administrative practice and procedures, Alaska, Archives and records, Public lands.

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 1201), Subpart 1821, Part 1820, Group 1800, Subchapter A, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

September 26, 1986.

Steven Griles,

Assistant Secretary of the Interior.

PART 1820—[AMENDED]

Subpart 1821—Execution and Filing of Forms

1. The authority citation for Part 1820 continues to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

§ 1821.2-1 [Amended]

2. The portion of § 1821.2-1(d) beginning with the heading "State Office and Area of Jurisdiction" and ending after the address and jurisdiction of the Wyoming State Office, is amended by removing the paragraph beginning "Fairbanks District Office", footnote 1, and the diagram to which the footnote refers. The paragraph beginning "Alaska State Office" is revised to read as follows:

* * * * *

(d) * * *

Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513—Alaska

* * * * *

[FR Doc. 86-22216 Filed 9-30-86; 8:45 am]

BILLING CODE 4310-JC-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Organization and Functions; Requests for Copies of Materials Which Are Available, or Made Available, for Public Inspection

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is acting to administratively amend the regulations pertaining to copying materials which are available, or made available, for public inspection. The revisions update obsolete information, remove language routinely misinterpreted, add appropriate clarifying language where

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1780

[Circular No. 2589; WO-150-06-4380-11]

Advisory Committees; Appointment and Reappointment to District Advisory Councils, etc.; Correction

ACTION: Final rulemaking; correction.

The following corrections are made in the final rulemaking on 43 CFR Part 1780, Advisory Committees; Appointment and Reappointment to District Advisory Councils, etc., published in the **Federal Register** on October 29, 1986 (51 FR 39528).

§ 1784.3 [Corrected]

1. Section 1784.3, paragraph (b)(4) is corrected to read as follows:

* * * * *

(4) A person who has served an appointed term of less than 3 years on a council to fill a vacancy occurring for reasons described in paragraph (b)(2) of this section may, at the discretion of the Secretary, be reappointed to two consecutive 3-year terms;

2. Section 1784.3, paragraph (b)(5) is corrected to read as follows:

(5) A person who has served 2 consecutive 3-year terms on a council may be subsequently appointed no earlier than 3 years after his or her last date of membership on that council. However, the Secretary may waive this 3-year waiting period and appoint that person to a 1-year term, upon determining that the member's continued or renewed service on the council is in the public interest and critical to the effective functioning of the council, and the responsible district manager has certified that these conditions have been met.

Dated: February 13, 1987.

James E. Cason,

Acting Assistant Secretary of the Interior.

[FR Doc. 87-3575 Filed 2-19-87; 8:45 am]

Published in 52 F.R. 5284, February 20, 1987 - Effective February 20, 1987

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1780

[Circular No. 2589; WO-150-06-4830-11]

Advisory Committees; Appointment and Reappointment to District Advisory Councils, etc.

Under the provisions of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 et seq.), and 5 U.S.C. Appendix I, Part 1780, Group 1700, Subchapter A, Chapter II, Title 43 of the Code of Federal Regulations is amended in Subpart 1784 as set forth below:

Group 1700—Program Management

PART 1780—COOPERATIVE RELATIONS

Subpart 1784—Advisory Committees

1. The authority for Part 1780 continues to read as follows:

Authority: 5 U.S.C. Appendix I, 43 U.S.C. 1701 *et seq.*).

§ 1784.0-3 [Amended]

2. Section 1784.0-3, paragraph (b) is revised to read as follows:

* * * * *

(b) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*), requires establishment of advisory councils representative of major citizen interests concerned with resource management planning or the management of public lands.

§ 1784.3 [Amended]

3. Section 1784.3, paragraph (b), is revised to read as follows:

* * * * *

(b) Appointment to district advisory councils shall be for 3-year terms, on the established staggered-term basis, with as near as possible to one-third of each council subject to appointment each year. An appointment shall be considered effective, for the purpose of reappointment eligibility as defined in paragraphs (b) (3), (4), and (5) of this section, on January 1 of the first year of the term, regardless of the date the appointment is actually made. Terms and appointment are governed by the following:

(1) The term of the member of a council who has been appointed on the basis of his status as an elected official of general purpose government serving the people of the district for which the council is established shall end upon that person's departure from such elective office if such departure occurs before his or her term of appointment or reappointment to the council would otherwise expire. However, the Secretary, in his discretion, may permit the member to complete the term in another vacant position on the council, provided that the member is qualified to represent one of the other categories of major citizens' interests set forth in the charter of the council;

(2) A vacancy occurring by reason of removal, resignation, death, or departure from elective office shall be filled for the balance of the vacating member's term using the same method by which the original appointment was made;

(3) A person who has served a 3-year term on a council may, at the discretion of the Secretary, be reappointed to a second consecutive 3-year term;

(4) A person who has served an appointed term of less than 3 years on a council to fill a vacancy occurring for reasons described in paragraph (b)(2) of this section, if 3 years had elapsed since the completion of that person's last 3-year term before being appointed to the vacancy, may, at the discretion of the Secretary, be reappointed to 2 consecutive 3-year terms;

(5) A person who has served 2 consecutive 3-year terms on a council may be reappointed no earlier than 3 years after his or her last date of membership on that council. However, the Secretary may waive this 3-year waiting period and reappoint that person to a 1-year term, upon determining that the member's continued or renewed service on the council is in the public interest and critical to the effective functioning of the council, and the responsible district manager has certified that these conditions have been met.

§ 1784.6-3 [Removed]

4. Section 1784.6-3 is removed and reserved.

§ 1784.6-4 [Amended]

5. In § 1784.6-4, this first sentence of paragraph (b) is revised to read as follows:

§ 1784.6-4 District advisory councils.

* * * * *

(b) The Secretary or his designee shall appoint 15 members to serve on the California Desert District Advisory Council, and not less than 10 nor more than 15 members to serve on each of the other councils in accordance with the provisions of § 1784.3(b) of this title.* * *

6. In § 1784.6-4, paragraphs (d) and (e) are redesignated (e) and (f), respectively, and new paragraph (d) is added to read as follows:

* * * * *

(d) In addition to the functions assigned by paragraph (c) of this section, the California Desert District Advisory Council advises the California Desert District Manager with respect to the implementation of the comprehensive, long-range plan for the management, use, development, and protection of the public lands within the California Desert Conservation Area.

§ 1784.6-5 [Amended]

7. Section 1784.6-5(f) is removed.

J. Steven Griles,

Assistant Secretary of the Interior.

October 6, 1986.

[FR Doc. 86-24396 Filed 10-28-86; 8:45 am]

Published in 51 F.R. 39528, October 29, 1986 - Effective November 28, 1986

#2589

The commenter objects to having a potential situation arise where one certified mine foreman acting as a certified blaster must report to another certified mine foreman. The Director interprets the amendment as providing an additional safety check of the blasting area before allowing people to re-enter and does not believe that this additional safety feature would create any problems.

The commenter also sought clarification of the terms "communication or high voltage transmission tower" and "major oil or gas distribution pipeline." The Director believes these terms are self-explanatory and finds no basis to require ODNR to amend its rule to include definitions of "communication or high voltage transmission tower" or "major oil or gas distribution pipeline."

V. Director's Decision

The Director, based on the above findings, is approving the use of explosives rules as submitted to OSMRE on July 10, 1986. The Director is amending Part 935 of 30 CFR Chapter VII to reflect approval of the State program amendments.

VI. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: October 23, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

PART 935—OHIO

30 CFR Part 935 is amended as follows:

1. The authority citation for Part 935 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. In Part 935, § 935.15 is amended by adding a new paragraph (y) as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(y) The following amendment submitted to OSMRE on July 10, 1986, is approved effective October 29, 1986. Ohio Administrative Code, Section 1501:13-9-06, use of explosives.

[FR Doc. 86-24427 Filed 10-28-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 1003

Medicare and Medicaid Programs; Fraud and Abuse; Correction

AGENCY: Office of the Secretary, HHS; Office of the Inspector General (OIG).

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors that appeared in the final rule, published September 30, 1986, that established a new 42 CFR Chapter V—"Office of Inspector General—Health Care, Department of Health and Human Services."

FOR FURTHER INFORMATION CONTACT: Joel Schaer (202) 472-5270.

SUPPLEMENTARY INFORMATION: On September 30, 1986, a new Chapter V—"Office of Inspector General—Health Care, Department of Health and Human Services"—was published in the Federal Register (51 FR 34764) to specifically reflect the OIG's fraud and abuse authority and responsibilities under Medicare and Medicaid. In establishing the new Chapter V, several technical amendments addressing the OIG's civil money penalty authorities, originally published in the Federal Register on September 13, 1985 (50 FR 37370), were inadvertently omitted in the recodification package.

To correct these omissions in 42 CFR Part 1003, we are making the following corrections:

§ 1003.100 [Corrected]

A. Page 34777: In column 2, § 1003.100(a), in the fourth line, the citation "1320a-7c" is corrected to read as "1320a-7(c)."

§ 1003.106 [Corrected]

A. Page 34779: In column 1, § 1003.106(c)(1), in the sixth line, "§ 1003.103" is corrected to read as "§§ 1003.103 and 1003.104."

B. Page 34779: In column 1, § 1003.106(c)(2), in the sixth line, "§ 1003.103" is corrected to read as "§§ 1003.103 and 1003.104."

§ 1003.115 [Corrected]

A. Page 34780: In column 1, § 1003.115(b)(5), in the second line after the word "Medicare", the words "and Medicaid" are added.

§ 1003.116 [Corrected]

A. On page 34780: In column 2, § 1003.116(b)(1)(ii), which was corrected to read § 1003.116(b)(2)(ii) at 51 FR 37577, October 23, 1986, is further corrected in the first line after the word "Medicare", by adding the words "and Medicaid".

(Catalog of Federal Domestic Assistance Programs, No. 13.714, Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance Program; and No. 13.744, Medicare—Supplementary Medical Insurance Program)

Dated: October 22, 1986.

Barbara S. Wamsley,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-24446 Filed 10-28-86; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1780

[Circular No. 2589; WO-150-06-4830-11]

Advisory Committees; Appointment and Reappointment to District Advisory Councils, etc.

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: The final rulemaking amends Subpart 1784 of the title to redefine the conditions under which members may be reappointed to district advisory councils; delete the section on the California Desert Conservation Area Advisory Committee because it terminated and its functions were assumed by the California Desert District Advisory Council in 1981; correct the section of the regulations on frequency of appointments to district advisory councils to conform with the section on member service; and provide that a person occupying the position of the elected official of general purposes government may be permitted, at the discretion of the Secretary of the Interior, to remain on the council upon departing from elective office if there is another vacant position for which he or she is qualified.

EFFECTIVE DATE: November 28, 1986.

ADDRESS: Any suggestions or inquiries should be sent to: Director (150), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: David S. Johnson, (202) 343-2054.

SUPPLEMENTARY INFORMATION: A proposed rulemaking to amend provisions of the existing regulations in 43 CFR Part 1780, Advisory Committees, was published in the Federal Register on May 29, 1986 (51 FR 19367), inviting public comment for a period of 60 days.

The Department of the Interior received 2 comments, 1 from a State Office of the Bureau of Land Management, and 1 from an individual who currently serves on a District Advisory Council.

The first comment stated that, while the proposed rulemaking correctly explained that the functions of the California Desert Conservation Area Advisory Committee, which terminated on December 31, 1981, were taken over by the California Desert District Advisory Council, it omitted a statement of the Council's additional functions. These functions are set forth in section 601(g) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 USC 1781(g)). The functions have been fully stated in a provision added in the final rulemaking.

The same comment suggested that the current practice of maintaining the California Desert District Advisory Council with not less than 15 members be continued and that this requirements be formally stated in the final rulemaking. This comment has also been adopted. Because it performs the dual functions of advisory on multiple use of public lands and on matters relating to management of the unique California Desert Conservation Area, it is important that this particular District Advisory Council include a full complement of 15 citizens to perform the work essential to these 2 functions.

The second comment suggested that § 1784.3(b)(1) of the proposed rulemaking is insufficiently flexible. This provision stated that a member of a council appointed on the basis of his or her status as a elected official of general purpose government to comply with section 309(a) of FLPMA shall leave the council upon departure from public office. The comment urged that the provision be amended to allow such a member to remain on the council at the discretion of the Secretary of the Interior if such member is qualified to represent one of the other major citizens' interests concerning the problems relating to land use planning or public land management, as provided in section 309(a) of FLPMA (43 U.S.C. 1739(a)). This suggestion has been adopted in the final rulemaking.

An editorial change has been made in § 1784.3(b) to make it clear that, for the purpose of reappointment eligibility, the 3-year term of a member of a district advisory council shall be deemed to begin on January 1 of the first year of the term, regardless of when the appointment is actually made. This clarification of intent is necessary to ensure that late appointments will not interfere with the regular turnover of council memberships.

Other editorial changes have been made as necessary.

The principal author of this final rulemaking is David S. Johnson of the Division of Congressional Affairs, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rulemaking under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The final rulemaking will not affect the economy to the extent of $100,000,000 per year, and will impose no new restrictions on commercial operations of any size.

This final rulemaking does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Part 1780

Administrative practice and procedure, Advisory committees, Public lands.

Under the provisions of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 et seq.), and 5 U.S.C. Appendix I, Part 1780, Group 1700, Subchapter A, Chapter II, Title 43 of the Code of Federal Regulations is amended in Subpart 1784 as set forth below:

J. Steven Griles,

Assistant Secretary of the Interior.

October 6, 1986.

Group 1700—Program Management

PART 1780—COOPERATIVE RELATIONS

Subpart 1784—Advisory Committees

1. The authority for Part 1780 continues to read as follows:

Authority: 5 U.S.C. Appendix I, 43 U.S.C. 1701 *et seq.*).

§ 1784.0-3 [Amended]

2. Section 1784.0-3, paragraph (b) is revised to read as follows:

* * * * *

(b) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*), requires establishment of advisory councils representative of major citizen interests concerned with resource management planning or the management of public lands.

§ 1784.3 [Amended]

3. Section 1784.3, paragraph (b), is revised to read as follows:

* * * * *

(b) Appointment to district advisory councils shall be for 3-year terms, on the established staggered-term basis, with as near as possible to one-third of each council subject to appointment each year. An appointment shall be considered effective, for the purpose of reappointment eligibility as defined in paragraphs (b) (3), (4), and (5) of this section, on January 1 of the first year of the term, regardless of the date the appointment is actually made. Terms and appointment are governed by the following:

(1) The term of the member of a council who has been appointed on the basis of his status as an elected official of general purpose government serving the people of the district for which the council is established shall end upon that person's departure from such elective office if such departure occurs before his or her term of appointment or reappointment to the council would otherwise expire. However, the Secretary, in his discretion, may permit the member to complete the term in another vacant position on the council, provided that the member is qualified to represent one of the other categories of major citizens' interests set forth in the charter of the council;

(2) A vacancy occurring by reason of removal, resignation, death, or departure from elective office shall be filled for the balance of the vacating member's term using the same method by which the original appointment was made;

(3) A person who has served a 3-year term on a council may, at the discretion of the Secretary, be reappointed to a second consecutive 3-year term;

(4) A person who has served an appointed term of less than 3 years on a council to fill a vacancy occurring for reasons described in paragraph (b)(2) of this section, if 3 years had elapsed since the completion of that person's last 3-year term before being appointed to the vacancy, may, at the discretion of the Secretary, be reappointed to 2 consecutive 3-year terms;

(5) A person who has served 2 consecutive 3-year terms on a council may be reappointed no earlier than 3 years after his or her last date of membership on that council. However, the Secretary may waive this 3-year waiting period and reappoint that person to a 1-year term, upon determining that the member's continued or renewed service on the council is in the public interest and critical to the effective functioning of the council, and the responsible district manager has certified that these conditions have been met.

§ 1784.6-3 [Removed]

4. Section 1784.6-3 is removed and reserved.

§ 1784.6-4 [Amended]

5. In § 1784.6-4, this first sentence of paragraph (b) is revised to read as follows:

§ 1784.6-4 District advisory councils.

* * * * *

(b) The Secretary or his designee shall appoint 15 members to serve on the California Desert District Advisory Council, and not less than 10 nor more than 15 members to serve on each of the other councils in accordance with the provisions of § 1784.3(b) of this title.* * *

6. In § 1784.6-4, paragraphs (d) and (e) are redesignated (e) and (f), respectively, and new paragraph (d) is added to read as follows:

* * * * *

(d) In addition to the functions assigned by paragraph (c) of this section, the California Desert District Advisory Council advises the California Desert District Manager with respect to the implementation of the comprehensive, long-range plan for the management, use, development, and protection of the public lands within the California Desert Conservation Area.

§ 1784.6-5 [Amended]

7. Section 1784.6-5(f) is removed.

[FR Doc. 86-24396 Filed 10-28-86; 8:45 am]

BILLING CODE 4310-84-M

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43 CFR Public Land Order 6627

[AA-320-06-4220-10; M-32820]

Montana; Withdrawal of Public Land for Bureau of Reclamation Material Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 170 acres of public land from surface entry and mining for 20 years for the Bureau of Reclamation to protect a critical material site. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: October 29, 1986.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-657-6090.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land, which is under the jurisdiction of the Secretary of the Interior, is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws, and reserved for the Bureau of Reclamation as a material site.

Montana Principal Meridian

T. 7 N., R. 1 E.,
Sec. 26, N½NE¼, N½N½SW¼NE¼, NE¼NW¼, and N½S½NW¼.

The area described contains 170 acres in Broadwater County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

J. Steven Griles,
Assistant Secretary of the Interior.
October 21, 1986.

[FR Doc. 86-24434 Filed 10-28-86; 8:45 am]

BILLING CODE 4310-84-M

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43 CFR Public Land Order 6626

[AA-320-06-4220-10; W-15857]

Withdrawal of Public Lands for Parting of the Ways Historical Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 40 acres of public land from surface entry and mining to protect the Parting of the Ways historical site. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: October 29, 1986.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307-772-2089.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect a Bureau of Land Management historical site.

Sixth Principal Meridian

T. 26 N., R. 104 W.,
Sec. 4, E½SE¼NW¼, W½SW¼NE¼.

The area described contains 40 acres in Sweetwater County.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the Federal Register as provided in 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-3513 Filed 2-19-87; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1780

[Circular No. 2589; WO-150-06-4380-11]

Advisory Committees; Appointment and Reappointment to District Advisory Councils, etc.; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking; correction.

SUMMARY: The Department of the Interior is correcting errors in the October 29, 1986 (51 FR 39528) final rulemaking on Advisory Committees to clarify two provisions that were confusing and susceptible of misinterpretation.

EFFECTIVE DATE: February 20, 1987.

ADDRESS: Inquiries or suggestions should be sent to: Director (150), Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: David S. Johnson, (202) 343-2054.

SUPPLEMENTARY INFORMATION: This document corrects 2 provisions of the final rulemaking on Advisory Committees in Part 1780 published in the Federal Register on October 29, 1986 (51 FR 39528). These corrections clarify the final rulemaking to reflect the intention of the Department of the Interior in that final rulemaking.

1. Section 1784.3(b)(4), page 39530, first column, is corrected by removing the unnecessary phrase, "if 3 years had elapsed since the completion of that person's last 3-year term before being appointed to the vacancy," which, in the context of paragraph (b)(4), could be misinterpreted to imply that, under some unstated circumstances, a person could be appointed to a council to fill a vacancy sooner than 3 years after completion of 2 consecutive 3-year terms. The phrase is rendered unnecessary by the prohibition in paragraph (b)(5) that a person cannot be subsequently appointed sooner than 3 years after the completion of 2 consecutive 3-year terms.

2. Section 1784.3(b)(5), page 39530, first column, is corrected to avoid the possible misinterpretation that it applies only to immediate reappointments to extend or continue a term on a council, and not to subsequent appointments. The phrase "may be reappointed" and the word "reappoint" are removed, and the phrase "may be subsequently appointed" and the word "appoint" are inserted in their places.

Dated: February 13, 1987.

James E. Cason,

Acting Assistant Secretary of the Interior.

The following corrections are made in the final rulemaking on 43 CFR Part 1780, Advisory Committees; Appointment and Reappointment to District Advisory Councils, etc., published in the Federal Register on October 29, 1986 (51 FR 39528).

§ 1784.3 [Corrected]

1. Section 1784.3, paragraph (b)(4) is corrected to read as follows:

* * * * *

(4) A person who has served an appointed term of less than 3 years on a council to fill a vacancy occurring for reasons described in paragraph (b)(2) of this section may, at the discretion of the Secretary, be reappointed to two consecutive 3-year terms;

2. Section 1784.3, paragraph (b)(5) is corrected to read as follows:

(5) A person who has served 2 consecutive 3-year terms on a council may be subsequently appointed no earlier than 3 years after his or her last date of membership on that council. However, the Secretary may waive this 3-year waiting period and appoint that person to a 1-year term, upon determining that the member's continued or renewed service on the council is in the public interest and critical to the effective functioning of the council, and the responsible district manager has certified that these conditions have been met.

[FR Doc. 87-3575 Filed 2-19-87; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 10

Environmental Considerations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Environmental Impact Statements and environmental assessments will no longer be required for those community-wide exceptions for floodproofed residential basements which meet certain technical standards.

EFFECTIVE DATE: March 1, 1987.

FOR FURTHER INFORMATION CONTACT: John Scheibel, Associate General Counsel, FEMA, 500 C Street, SW., Washington, DC 20472. Telephone: (202) 646-4100.

SUPPLEMENTARY INFORMATION: Pursuant to 44 CFR 10.8(d), on September 5, 1986, in the Federal Register, the Federal Emergency Management Agency (FEMA) published a proposed rule to amend its regulations to expand the list of categorical exclusions, actions which are not subject to the application of 44 CFR Part 10 of FEMA's regulations. That part implements the National Environmental Policy Act of 1969 and the regulations of the Council on Environmental Quality (40 CFR Parts 1500 through 1508).

No comments were received, consequently FEMA is publishing this notice of a final rule. This relates to the final rule published in the Federal Register by FEMA on August 25, 1986, which included supplemental information on "Exceptions for Floodproofed Residential Basements." FEMA determined, after reviewing exception requests and conducting a study, that such exceptions will continue to be granted but under a simplified procedure.

The simplified procedure would be based solely on a technical review by FEMA of flooding characteristics in the community to determine if the community met criteria in § 60.6(c) of the final rule published in the Federal Register on August 25, 1986. If a community met the criteria, no finding would be required that there would be severe hardship or gross inequity if the exception were denied and no special environmental clearance (environmental assessment or Environmental Impact Statement) would be prepared.

This regulation is not a major rule within the meaning of the term in Executive Order 12291 nor will it have a significant economic impact on a substantial number of small entities. Hence, no regulatory impact statements have been prepared. Also there are no information collection requirements needing clearance under 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 10

Environmental impact statements.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2910

[AA-320-06-4211-02-2410; Circular No. 2590]

Airport Leasing Procedures; Amendments

Under the authority of the Act of May 24, 1928, as amended (49 U.S.C. Appendix, 211-213) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 2910, Group 2900, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 2910—[AMENDED]

1. Part 2910 is amended by adding an authority citation to read:

Authority: 49 U.S.C. Appendix, 211-213, 43 U S.C. 869 et seq. 48 U.S.C 360, 361.

2. Part 2910 is amended by revising Subpart 2911 to read:

Subpart 2911—Airport

Sec.

2911.0-1 Purpose.
2911.0-3 Authority.
2911.0-5 Definitions.
2911.0-8 Lands available for leasing.
2911.1 Terms and conditions.
2911.2 Procedures.
2911.2-1 Preapplication activity.
2911.2-2 Applications.
2911.2-3 Report by Administrator. Notice of Realty Action.
2911.2-4 Execution of lease.

Authority: 49 U.S.C. 211; 43 U.S.C. 1701 et seq.

Subpart 2911—Airport

§ 2911.0-1 Purpose.

This subpart sets forth procedures for issuance of airport leases on the public lands.

§ 2911.0-3 Authority.

The Act of May 24, 1928, as amended (49 U.S.C. Appendix, 211-213), authorizes the Secretary of the Interior to lease for use as a public airport, any contiguous unreserved and unappropriated public lands not to exceed 2,560 acres in area.

§ 2911.0-5 Definitions.

As used in this subpart, the term:

(a) "Act" means the Act of May 24, 1928, as amended (49 U.S.C. Appendix, 211-213).

(b) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(c) "Administrator" means the Administrator of the Federal Aviation Administration.

(d) "Applicant" means any individual who is a citizen of the United States; a group or association of citizens of the United States; any corporation, organized under the laws of the United States or of any State, authorized to conduct business in the State in which the land involved is located; or a State or political subdivisions or instrumentality thereof, including counties and municipalities; who submits an application for an airport lease under this subpart.

(e) "Public airport" means an airport open to use by all persons without prior permission of the airport lessee or operator, and without restrictions within the physical capacities of its available facilities.

§ 2911.0-8 Lands available for leasing.

Any contiguous unreserved and unappropriated public lands, surveyed or unsurveyed, not exceeding 2,560 acres in area, may be leased under the provisions of the Act, subject to valid existing rights under the public land laws.

§ 2911.1 Terms and conditions.

(a) The lessee shall, within 1 year from the date of issuance of the lease, equip the airport as required by the Administrator and file a report thereof in the Bureau of Land Management District office having jurisdiction over the lands under lease.

(b) At any time during the term of the lease, the Administrator may have an inspection made of the airport, and if the the airport does not comply with the ratings set by the Federal Aviation Administration, the Administrator shall submit a written statement describing the deficiencies to the Bureau of Land Management District office having jurisdiction over the lands under lease for appropriate action.

(c) The authorized officer may cancel, in whole or in part, a lease issued under the Act for any of the following reasons: Lessee failure to use the leased premises or any part thereof for a period of at least 6 months; use of the property or any part thereof for a purpose other than the authorized use; failure to pay the annual rental in full on or before the date due; failure to maintain the premises according to the ratings set by the Federal Aviation Administration; failure to comply with the regulations in this part or the terms of the lease.

(d) Leases under the Act shall be for a period not to exceed 20 years and may be renewed for like periods.

(e) Annual rental for leases to any citizen of the United States, any group or association of citizens, or any corporation organized under the laws of the United States or any State shall be at appraised fair market rental, with a minimum annual rental payment of $100. State or political subdivisions thereof, including counties and municipalities, shall pay to the lessor an annual rental calculated at the appraised fair market value of the rental of the property less 50%, with a minimum annual rental payment of $100. In fixing the rentals, consideration shall be given to all pertinent facts and circumstances, including use of the airport by government departments and agencies. Rental of each lease shall be reconsidered and revised at 5-year intervals to reflect current appraised fair market value. The first annual rental payment shall be made prior to issuance of the lease. All subsequent payments shall be paid on or before the anniversary date of issuance of the lease.

(f) The lessee shall agree that all departments and agencies of the United States operating aircraft shall have free and unrestricted use of the airport and, with the approval of the authorized officer, such departments or agencies shall have the right to erect and install therein such structures and improvements as are deemed advisable by the heads of such departments and agencies. Whenever the President may deem it necessary for military purposes, the Secretary of the Army may assume full control of the airport.

(g) The lessee shall submit to the Administrator for approval regulations governing operations of the airport.

Published in 51 F.R. 40807, November 10, 1986 - Effective December 10, 1986

§ 2911.2 Procedures.

§ 2911.2-1 Preapplication activity.

Persons seeking to lease public lands under this subpart shall first consult with the authorized officer in the District or Resource Area Office in which the lands are located. Such consultation is necessary to determine land availability and conformity of proposed use with approved land use plans, explain associated statutory and regulatory requirements, familiarize the potential applicant with respective management responsibilities, set forth the application processing procedures for the proposed action, and identify potential conflicts. Upon completion of the consultation, persons seeking to lease public lands for a public airport may submit an application for consideration by the authorized officer.

§ 2911.2-2 Applications.

(a) Each application shall clearly describe the lands applied for by legal subdivisions and/or by metes and bounds and contain a plan of development and use signed by the applicant or by a duly authorized agent or officer of the applicant. When required by the authorized officer, the application shall include copies of the appropriate State, county, or municipal airport licenses or permits, as well as such additional States and local clearances as may be required.

(b) Each application shall be accompanied by a non-refundable filing fee of $100. Each applicant shall also be required to pay the cost of publication of a Notice of Reality Action in the **Federal Register** and a newspaper of general circulation in the area in which the lands are located.

(c) If approval of an application results in cancellation of a grazing permit of lease or a reduction in grazing acreage, the provisions of § 4110.4-2 of this title shall apply.

§ 2911.2-3 Report by Administrator; Notice of Realty Action.

(a) Upon receipt of the application, the authorized officer shall send 1 copy to the Administrator for a determination concerning what fuel facilities, lights, and other furnishings are necessary to meet the rating set by that agency. After receiving the report of the Administrator, and before making a determination to issue a lease, the authorized officer shall publish a Notice of Realty Action in the **Federal Register** and in a newspaper of general circulation in the area of the lands to be leased. The notice shall provide 45 days from the date of publication in the **Federal Register** for comments by the public. Comments shall be sent to the office issuing the notice. The notice shall not be published until the authorized officer has received the filing fee from the applicant and is satisfied that all statutory and regulatory requirements have been met.

(b) The notice of realty action may segregate the lands or interests in lands to be conveyed to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the notice of realty action shall terminate either upon issuance of a document of conveyance of 1 year from the date of publication in the **Federal Register**, whichever occurs first.

§ 2911.2-4 Executive of lease.

Upon receipt the payments required by § 2911.2-2(b) of this title and not less than 45 days following the publications required by § 2911.2-4 of this title, the authorized officer shall make a decision on the application and, if the application is approved, issue the lease.

J. Steven Griles,

Assistant Secretary of the Interior.

October 21, 1986.

[FR Doc. 86-25222 Filed 11-7-86; 8:45 am]

#2590

System (GTS) accounts are used, travel management services will be furnished as provided in FPMR Temporary Regulation A-25. (See the FTD for the location of TMCs.)

8. *Progressive airline awards for the same city/airport pair.* When progressive awards are made for the same city/airport pair, the contractors are listed in the FTD in priority order from the contractor (primary) offering the lower YCA fare to the contractor (secondary) offering the next higher YCA fare. Except as otherwise provided in this paragraph, agencies shall obtain contract services in the order of contractor priority specified in the FTD.

a. Where the contractor offers both a YCA fare and a restricted fare (e.g., QCA) for the same city/airport pair, the FTD lists both fares and describes the qualifying conditions for obtaining the restricted fare. The availability of a lower restricted fare by a secondary contractor does not remove the Government's obligation to request service from the primary contractor. Agencies may use the secondary contractor's restricted fare only if the exceptions noted in subpar. b of this paragraph indicate that the use of the secondary contractor is justified. For example, if the primary contractor listed in the FTD offers a YCA fare of $90 and the secondary contractor offers a YCA fare of $100 and an QCA fare of $80, the QCA fare of $80 may be used only if the primary contractor with the lower YCA fare of $90 is displaced for reasons noted in subpar. b of this paragraph.

b. The secondary contractor may be used when:

(1) Seating space or the scheduled flight of the primary contractor is not available in time to accomplish the purpose of the travel, or the scheduled flight would require the traveler to incur unnecessary overnight lodging expense;

(2) The primary contractor's flight schedule for the travel involved is inconsistent with the Government's policy of scheduling travel to the maximum extent practicable during normal working hours (for further information, see the Federal Personnel Manual, Supplement 990-2); or

(3) Based on a cost comparison, the primary contractor's fare, when added to such factors as ground transportation, lost productive time, allowable overtime, and additional overnight lodging expense, would result in higher costs to the Government than the costs resulting from the use of the secondary contractor.

c. When a contractor offers a commercial fare lower than its Government contract fare, the ordering agency may use the lower fare provided the qualifications for obtaining the lower fare are compatible with the agency's travel requirements and provided a cost comparison of total costs prescribed in subpar. b(3) of this paragraph justifies a change in the order of contractor succession. By offering the general public a fare lower than its contract fare, the contractor assumes the status of a noncontract carrier and the provisions of par. 9 apply.

9. *Use of noncontract carriers for listed city/airport pairs.*

a. Heads of agencies are authorized to approve the use of noncontract carriers for city/airport pairs listed in the FTD when their use is justified under the conditions specified in subpar. b of this paragraph. This authority may be delegated provided appropriate guidelines in the form of regulations or other written instructions are furnished the designee. Redelegations of authority shall be limited. Delegation and redelegation of authority shall be held to as high an administrative level as practicable to ensure adequate consideration and review of the circumstances requiring the use of noncontract carriers. Justification for the use of noncontract carriers will be authorized on individual travel orders (if known before travel begins) or approved on vouchers (if not known before travel begins).

b. Use of noncontract carriers for city/airport pairs listed in the FTD is justified when:

(1) Seating space or the scheduled service of the contractor is not available in time to accomplish the purpose of the travel, or the scheduled service would require the traveler to incur overnight lodging expense;

(2) The contractor's schedule for the travel involved is inconsistent with the Government's policy of scheduling travel to the maximum extent practicable during normal working hours; or

(3) Based on a cost comparison (see note),

(a) A restricted or unrestricted coach fare available to the general public is lower than the contract fare or other fare offered by the contract carrier, all other cost factors being equal; or

(b) Use of a noncontract coach fare available to the general public would, when added to such factors as ground transportation, lost productive time, allowable overtime, and additional overnight lodging expense, result in lower costs to the Government than the costs that would accrue if comparable cost factors were added to the contract fare.

Note. When making cost comparisons:

a. YDG, MDG, or other fares restricted to Government employees shall not be used;

b. Promotional/restricted fares offered by noncontract carriers to the general public may be used provided:

(1) The traveler can meet all qualifying restrictions associated with such fares, and

(2) The service provided by the noncontract carrier is equal to or better than that of the contractor with respect to enroute trip times;

c. Agencies should take into account any penalty fee a carrier may impose when reservations for promotional/restricted fares and canceled or changed; and

d. The traveler and/or the traveler's agency, at the time reservations are made or travel is performed (whichever occurs first), shall demonstrate conclusively that the contractor did not offer the same fare cited in the cost comparison. Justification for using the noncontract carrier shall be shown on the travel authorization or travel voucher, as provided in subpar. 9a.

10. *Traveler liability.* In the absence of specific authorization or approval stated on or attached to the travel authorization or travel voucher, the traveler shall be responsible for any difference in cost that may result from the traveler's unauthorized use of noncontract service or the failure to observe the order of contractor succession. The traveler's indebtedness to the Government shall be the difference between the price of the service used and the lowest contract fare applicable to the travel involved.

[FR Doc. 86-25324 Filed 11-7-86; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2910

[AA-320-06-4211-02-2410; Circular No. 2590]

Airport Leasing Procedures; Amendments

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: The final rulemaking makes a number of amendments to the existing regulations which change the terms for annual rental, provide for an application filing fee which more accurately reflects current administrative costs for the processing of applications, and revise

the procedures in the regulations to streamline them and make them more efficient. The final rulemaking also amends existing regulations at 43 CFR Subpart 2911 to remove provisions relating to withdrawal of public lands for beacon lights and air navigation facilities which were repealed by the Federal Land Policy and Management Act of 1976.

EFFECTIVE DATE: December 10, 1986.

ADDRESS: Inquiries or suggestions should be sent to: Director (320), Bureau of Land Management, Room 3642, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gary L. Rowe, (202) 343-8693;

Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION: A proposed rulemaking amending the existing regulations on airport leases was published in the **Federal Register** on August 20, 1985 (50 FR 33578), with a 60-day comment period. Comments were received from nine sources, six from Federal agencies, one from a State, one from the private sector and one from the environmental sector.

Most of the comments were directed to specific provisions of the proposed rulemaking. Those sections and the action taken on the comments are discussed in this preamble. Only those sections that were the subject of comments are discussed. Some of the comments were concerned with procedural processes that are more properly the subject of inclusion in the Bureau of Land Management's Manual and directive system. After this rulemaking becomes final, a manual addressing these issues will be prepared and published.

Nearly all of the comments pointed out the typographical error in § 2911.0-3 of the proposed rulemaking. As suggested in the comments, the date of the Act has been changed from 1982 to 1928 by the final rulemaking. The final rulemaking also amended all of the other sections where the citation for the Act of May 24, 1928 appears.

Several comments were directed to § 2911.0-5 of the proposed rulemaking. One comment, which has been adopted by the final rulemaking, pointed out that the term "Secretary" is not used in the regulation and the definition should be deleted.

A few of the comments recommended that the definition of the term "applicant" as it appeared in the proposed rulemaking be amended for clarification. After careful review of the comments on this term, the final rulemaking has amended the term.

One of the comments recommended that 2911.0-8 of the proposed rulemaking be amended to remove public lands designated as wilderness study areas from the lands that are available for leasing for an airport. This recommendation has not been adopted by the final rulemaking because at the time of the filing of an application for airport rental, the authorized officer can use existing authority to determine if the lands applied for should be protected and the lease denied because of their status as wilderness study area lands.

One of the comments questioned the need for the heading of § 2911.1 of the proposed rulemaking, and recommended that § 2911.1 be deleted. The final rulemaking has adopted this recommendation, deleting § 2911.1 and renumbering § 2911.1-1 as § 2911.1.

Section 2911.1-1 of the proposed rulemaking, which has been renumbered § 2911.1 by this final rulemaking, was the subject of numerous comments, several of which have been adopted by the final rulemaking. A comment suggested that the final rulemaking insert immediately after the phrase "Bureau of Land Management" the phrase "District office having jurisdiction over the lands under lease" in renumbered § 2911.1(b). This clarifying amendment has been adopted by the final rulemaking. Another comment on this section suggested that renumbered § 2911.1(c) be amended to make it clear that the rental must be paid on "or before" the due date. This suggestion also has been adopted by the final rulemaking. Another comment suggested that for clarity, the final rulemaking rewrite renumbered § 2911.1(e). After careful review of the language of the section in the proposed rulemaking and the recommendations contained in the comments, the section has been rewritten by the final rulemaking.

Several comments were received on §§ 2911.2, 2911.2-1, 2911.2-2, 2911.2-3 and 2911.2-4 of the proposed rulemaking. A couple of the comments recommended that the heading of § 2911.2-1 of the proposed rulemaking be changed to read "preapplication activity" and that reference to the term "proposal" be removed from §§ 2911.2-1 and 2911.2-2 of the proposed rulemaking. These changes would make the procedures in the airport lease regulations consistent with other regulations that cover applications for the disposal of the public lands. The final rulemaking has adopted the recommendations and §§ 2911.2-1 and 2911.2-2 have been rewritten to make them similar to those in other land disposal regulations. Another change recommended by the comments and adopted by the final rulemaking is the addition of language that specifies the type of land description that is required in an application for lands for airport rental. As recommended in a comment, the final rulemaking has amended § 2911.2-2 of the proposed rulemaking to remove the phrase "recordation and service fee" and replace it with the phrase "filing fee" which is a more accurate description of the fee paid with the application and makes this regulation consistent with other regulations requiring the payment of a filing fee. The final rulemaking also makes this change in § 2911.2-3 of the proposed rulemaking.

Finally, the final rulemaking has adopted a recommendation contained in the comments that language be added to § 2911.2-2 of the proposed rulemaking covering the action to be taken if the granting of the airport lease results in the cancellation of a grazing permit or lease or a reduction in grazing acreage.

Section 2911.2-3 of the proposed rulemaking was the subject of several comments which recommended changes. One comment pointed out that the proposed rulemaking was not specific as to the publication that would begin the running of the 45-day comment period. In response to this comment, the final rulemaking provides that the comment period shall begin with the publication of the notice of realty action in the **Federal Register**. A couple of comments made the point that the proposed rulemaking did not specifically provide that statutory requirements, such as compliance with the provisions of the National Environmental Policy Act of 1969, be met prior to the issuance of an airport lease. The final rulemaking has added language to § 2911.2-3 of the proposed rulemaking that clarifies that an airport lease will not be issued until the authorized officer has received the filing fee and that all statutory and regulatory requirements have been fulfilled.

Several of the comments pointed out that the notice of realty action provided in the proposed rulemaking did not segregate the lands covered by an airport lease application for entry under the public lands laws, including the mining laws, and recommended that the final rulemaking provide for segregation. The final rulemaking has adopted these recommendations and has added a paragraph (b) to § 2911.2-3 of the proposed rulemaking which provides for segregation of the public lands upon the publication of the notice of realty action.

Editorial and grammatical changes as needed also have been made.

The principal author of this final rulemaking is Gary Rowe, Division of Lands, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This final rulemaking will have no significant impact on an applicant for an airport lease on public lands, whether the applicant is large or small.

The final rulemaking contains no information collection requirements requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 2910

Airports, Alaska, Mines, Public lands, Recreation areas, Waste treatment and disposal.

Under the authority of the Act of May 24, 1928, as amended (49 U.S.C. Appendix, 211–213) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 2910, Group 2900, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

J. Steven Griles,

Assistant Secretary of the Interior.

October 21, 1986.

PART 2910—[AMENDED]

1. Part 2910 is amended by adding an authority citation to read:

Authority: 49 U.S.C. Appendix, 211–213, 43 U.S.C. 869 et seq. 48 U.S.C 360, 361.

2. Part 2910 is amended by revising Subpart 2911 to read:

Subpart 2911—Airport

Sec.

2911.0–1 Purpose.
2911.0–3 Authority.
2911.0–5 Definitions.
2911.0–8 Lands available for leasing.
2911.1 Terms and conditions.
2911.2 Procedures.
2911.2–1 Preapplication activity.
2911.2–2 Applications.
2911.2–3 Report by Administrator, Notice of Realty Action.
2911.2–4 Execution of lease.

Authority: 49 U.S.C. 211; 43 U.S.C. 1701 et seq.

Subpart 2911—Airport

§ 2911.0–1 Purpose.

This subpart sets forth procedures for issuance of airport leases on the public lands.

§ 2911.0–3 Authority.

The Act of May 24, 1928, as amended (49 U.S.C. Appendix, 211–213), authorizes the Secretary of the Interior to lease for use as a public airport, any contiguous unreserved and unappropriated public lands not to exceed 2,560 acres in area.

§ 2911.0–5 Definitions.

As used in this subpart, the term:

(a) "Act" means the Act of May 24, 1928, as amended (49 U.S.C. Appendix, 211–213).

(b) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(c) "Administrator" means the Administrator of the Federal Aviation Administration.

(d) "Applicant" means any individual who is a citizen of the United States; a group or association of citizens of the United States; any corporation, organized under the laws of the United States or of any State, authorized to conduct business in the State in which the land involved is located; or a State or political subdivisions or instrumentality thereof, including counties and municipalities; who submits an application for an airport lease under this subpart.

(e) "Public airport" means an airport open to use by all persons without prior permission of the airport lessee or operator, and without restrictions within the physical capacities of its available facilities.

§ 2911.0–8 Lands available for leasing.

Any contiguous unreserved and unappropriated public lands, surveyed or unsurveyed, not exceeding 2,560 acres in area, may be leased under the provisions of the Act, subject to valid existing rights under the public land laws.

§ 2911.1 Terms and conditions.

(a) The lessee shall, within 1 year from the date of issuance of the lease, equip the airport as required by the Administrator and file a report thereof in the Bureau of Land Management District office having jurisdiction over the lands under lease.

(b) At any time during the term of the lease, the Administrator may have an inspection made of the airport, and if the the airport does not comply with the ratings set by the Federal Aviation Administration, the Administrator shall submit a written statement describing the deficiencies to the Bureau of Land Management District office having jurisdiction over the lands under lease for appropriate action.

(c) The authorized officer may cancel, in whole or in part, a lease issued under the Act for any of the following reasons: Lessee failure to use the leased premises or any part thereof for a period of at least 6 months; use of the property or any part thereof for a purpose other than the authorized use; failure to pay the annual rental in full on or before the date due; failure to maintain the premises according to the ratings set by the Federal Aviation Administration; failure to comply with the regulations in this part or the terms of the lease.

(d) Leases under the Act shall be for a period not to exceed 20 years and may be renewed for like periods.

(e) Annual rental for leases to any citizen of the United States, any group or association of citizens, or any corporation organized under the laws of the United States or any State shall be at appraised fair market rental, with a minimum annual rental payment of $100. State or political subdivisions thereof, including counties and municipalities, shall pay to the lessor an annual rental calculated at the appraised fair market value of the rental of the property less 50%, with a minimum annual rental payment of $100. In fixing the rentals, consideration shall be given to all pertinent facts and circumstances, including use of the airport by government departments and agencies. Rental of each lease shall be reconsidered and revised at 5-year intervals to reflect current appraised fair market value. The first annual rental payment shall be made prior to issuance of the lease. All subsequent payments shall be paid on or before the anniversary date of issuance of the lease.

(f) The lessee shall agree that all departments and agencies of the United States operating aircraft shall have free and unrestricted use of the airport and, with the approval of the authorized officer, such departments or agencies shall have the right to erect and install therein such structures and improvements as are deemed advisable by the heads of such departments and agencies. Whenever the President may deem it necessary for military purposes, the Secretary of the Army may assume full control of the airport.

(g) The lessee shall submit to the Administrator for approval regulations governing operations of the airport.

2911.2 Procedures.

2911.2-1 Preapplication activity.

Persons seeking to lease public lands under this subpart shall first consult with the authorized officer in the District or Resource Area Office in which the lands are located. Such consultation is necessary to determine land availability and conformity of proposed use with approved land use plans, explain associated statutory and regulatory requirements, familiarize the potential applicant with respective management responsibilities, set forth the application processing procedures for the proposed action, and identify potential conflicts. Upon completion of the consultation, persons seeking to lease public lands for a public airport may submit an application for consideration by the authorized officer.

§ 2911.2-2 Applications.

(a) Each application shall clearly describe the lands applied for by legal subdivisions and/or by metes and bounds and contain a plan of development and use signed by the applicant or by a duly authorized agent or officer of the applicant. When required by the authorized officer, the application shall include copies of the appropriate State, county, or municipal airport licenses or permits, as well as such additional States and local clearances as may be required.

(b) Each application shall be accompanied by a non-refundable filing fee of $100. Each applicant shall also be required to pay the cost of publication of a Notice of Reality Action in the Federal Register and a newspaper of general circulation in the area in which the lands are located.

(c) If approval of an application results in cancellation of a grazing permit of lease or a reduction in grazing acreage, the provisions of § 4110.4-2 of this title shall apply.

§ 2911.2-3 Report by Administrator; Notice of Realty Action.

(a) Upon receipt of the application, the authorized officer shall send 1 copy to the Administrator for a determination concerning what fuel facilities, lights, and other furnishings are necessary to meet the rating set by that agency. After receiving the report of the Administrator, and before making a determination to issue a lease, the authorized officer shall publish a Notice of Realty Action in the Federal Register and in a newspaper of general circulation in the area of the lands to be leased. The notice shall provide 45 days from the date of publication in the Federal Register for comments by the public. Comments shall be sent to the office issuing the notice. The notice shall not be published until the authorized officer has received the filing fee from the applicant and is satisfied that all statutory and regulatory requirements have been met.

(b) The notice of realty action may segregate the lands or interests in lands to be conveyed to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the notice of realty action shall terminate either upon issuance of a document of conveyance of 1 year from the date of publication in the Federal Register, whichever occurs first.

§ 2911.2-4 Executive of lease.

Upon receipt the payments required by § 2911.2-2(b) of this title and not less than 45 days following the publications required by § 2911.2-4 of this title, the authorized officer shall make a decision on the application and, if the application is approved, issue the lease.

[FR Doc. 86-25222 Filed 11-7-86; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 61095-6195]

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In FR Doc. 86-23877 beginning on page 37408 in the issue of Wednesday, October 22, 1986, make the following corrections: On page 37409, in the third column, in the second paragraph, in the first line, insert "proceed" after "BSAI"; in the fifteenth line, "groundfishing" should read "groundfish fishing".

BILLING CODE 1505-01-M

#2590

Corrections

Federal Register
Vol. 51, No. 246
Tuesday, December 23, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2910

[AA-320-06-4211-02-2410; Circular No. 2590]

Airport Leasing Procedures; Amendments

Correction

In rule document 86-25222 beginning on page 40807 in the issue of Monday, November 10, 1986, make the following corrections:

§ 2911.2-3 [Corrected]

1. On page 40810, in § 2911.2-3(b), in the third column, in the third line, "conveyance of" should read "conveyance or".

§ 2911.2-4 [Corrected]

2. On page 40810, in § 2911.2-4, in the third column, in the section heading, "Executive" should read "Execution"; and in the first line, "receipt the" should read "receipt of the".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-07-NCBC; CA-19159]

Realty Action; Exchange of Public and Private Lands in Riverside and San Diego Counties, CA

Correction

In notice document 86-25131 appearing on page 40359 in the issue of Thursday, November 6, 1986, make the following corrections:

1. In the first column, in the legal description for Riverside County, in T. 7S., R. 3E., in Sec. 18, remove the comma between "E½" and "SE¼".

2. In the same column, in the legal description for San Diego County, in T.18S., R. 7E., in the first line of Sec. 2, remove the comma between "NW¼" and "SW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

Alaska National Wildlife Refuges, Management Regulations

Correction

In rule document 86-27901 beginning on page 44791 in the issue of Friday, December 12, 1986, make the following correction:

§ 36.2 [Corrected]

On page 44793, in the third column, in the amendment to § 36.2, remove the phrase "immediately after the words 'as defined in this section' " from the end of paragraph (h).

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR PARTS 3100, 3400, 3470 AND 3500

[Circular No. 2591; AA-660-87-4121-02]

Coal Management—General; Coal Management Provisions and Limitations; Oil and Gas Leasing; Leasing of Solid Minerals Other Than Coal and Oil Shale; Amendments to Incorporate Changes Required by Section 2(a)(2)(A) of the Mineral Leasing Act of 1920

PART 3100—[AMENDED]

1. The authority citation for Part 3100 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 760 et seq.), the Act of May 21, 1930 (30 U.S.C. 301-306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), the Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96-514), the Refuge Administration Act of 1966 (16 U.S.C. 688dd-ee), the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a) and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

§ 3102.5 [Amended]

2. Section 3102.5 is amended by removing from where it appears the phrase "and (d)" and replacing it with the figure "(d)" and by removing the period at the end of paragraph (d) and adding the phrase "; and (e) except for an assignment or transfer under Subpart 3106 of this title, in compliance with section 2(a)(2)(A) of the Act (compliance is determined for Federal coal leases in accordance with § 3472.1-2(e) of this title), in which case the signature on an application or lease constitutes evidence of compliance. A lease issued to any entity in violation of this paragraph (e) shall be subject to the cancellation provisions at § 3108.3 of this title. The term 'entity' is defined at § 3400.0-5(rr) of this title."

PART 3400—[AMENDED]

3. The authority citation for Part 3400 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521-531 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 et seq.) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

4. Section 3400.0-5 is amended by adding new paragraph (rr) to read:

§ 3400.0-5 Definitions

* * * * *

(rr) For the purposes of section 2(a)(2)(A) of the Act:

(1) "Arm's length transaction" means the transfer of an interest in a lease to an entity that is not controlled by or under common control with the transferor.

(2) "Bracket" means a 10-year period that begins on the date that coal is first produced on or after August 4, 1976, from a lease that has not been made subject to the diligence provisions of Part 3480 of this title on the date of first production.

(3) "Controlled by or under common control with," based on the instruments of ownership of the voting securities of an entity, means:

(i) Ownership in excess of 50 percent constitutes control;

(ii) Ownership of 20 through 50 percent creates a presumption of control; and

(iii) Ownership of less than 20 percent creates a presumption of noncontrol.

(4) "Entity" means any person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation.

(5) "Holds and has held" means the cumulative amount of time that an entity holds any working interest in a lease on or after August 4, 1976. The "holds and has held" requirement of section 2(a)(2)(A) of the Act is lessee-specific for each lease. "Working interest" includes both record title interests and arrangements whereby an entity has the ability to determine when, and under what circumstances, the rights granted by the lease to develop coal will be exercised.

(6) "Producing" means actually severing coal, or operating an ongoing mining operation in accordance with standard industry operation practices. A lease is deemed to be producing, even though:

(i) Severance is temporarily suspended for reasons beyond the reasonable control of the operator/lessee, as that term is defined at § 3480.0-5(a)(2) of this title, including but not limited to factors such as: Dragline or other equipment moving, breakdown, or repair; overburden removal; sale of coal from stockpiles; vacations and holidays; orders of governmental authorities; and failure of customers to take coal; or

(ii) Severed coal is being processed, loaded, or transported from the point of severance to the point of sale.

PART 3470—[AMENDED]

5. The authority citation for Part 3470 continues to read:

Authority: 30 U.S.C. 181 et seq. and 30 U.S.C. 351-359.

6. Section 3472.1-2(e) is revised to read:

§ 3472.1-2 Special leasing qualifications.

* * * * *

(e)(1)(i) On or after December 31, 1986 no lease shall be issued and no existing lease shall be transferred, to any entity, that holds and has held for 10 years any lease from which the entity is not producing the coal deposits in commercial quantities, except as authorized under the advance royalty or suspension provisions of Part 3480 of this title, or paragraphs (e)(4) or (5) of this section.

(ii) An entity seeking to obtain a working interest in a lease, or approval of a transfer under subpart 3453 of this title, shall qualify both on the date of

Published in 51 F.R. 43910, December 5, 1986 - Effective December 5, 1986

determination of lessee qualifications and on the date the lease is issued or transfer approved.

(iii) Once a lease has been issued to a qualified entity or transfer approved for a lease under subpart 3453 of this title, disqualification at a later date shall not result in surrender of that lease, or recision of the approved transfer, except as provided in paragraph (e)(4) of this section.

(2)(i) Any entity seeking to obtain a lease or approval of a transfer of a lease pursuant to 43 CFR Group 3400 of this title shall certify, in writing, that the entity is in compliance with the Act and the requirements of this subpart. The entity's self-certification statement shall include:

(A) A statement that the entity is qualified to be issued a lease or to have a transfer approved in accordance with the presumption of control or the presumption of noncontrol requirements at § 3400.0–5(rr) of this title, and in accordance with the producing requirements at paragraph (e)(6) of this section;

(B) Justification rebutting the presumption of control requirements at § 3400.0–5(rr) of this title, if the entity's instruments of ownership of the voting securities of another entity or of its voting securities by another entity are 20 through 50 percent. The authorized officer, based on the written self-certification statement and other relevant information, shall determine whether the entity has rebutted the presumption of control.

(ii) If a lease is issued, or a transfer approved under subpart 3453 of this title, to an entity based upon an improper, written self-certification of compliance, the authorized officer shall administratively cancel the lease, or rescind the approved transfer, after complying with § 3452.2–2 of this title.

(3) The authorized officer may require an entity holding or seeking to hold an interest in a lease, to furnish, at any time, further evidence of compliance with the special leasing qualifications of this subpart.

(4)(i) An entity, seeking to qualify for lease issuance, or transfer approval under subpart 3453 of this title, shall not be disqualified under the provisions of this subpart if it has one of the following actions pending before the authorized officer for any lease that would otherwise disqualify it under this subpart:

(A) Request for lease relinquishment; or

(B) Application for arm's-length lease assignment; or

(C) Application for approval of a logical mining unit that the authorized officer determines would be producing on its effective date.

(ii) Once a lease has been issued, or transfer approved, to an entity that qualifies under paragraph (e)(4)(i) of this section, an adverse decision by the authorized officer on the pending action, or the withdrawal of the pending action by the applicant, shall result in termination of the lease or recision of the transfer approval. Such decision of the authorized officer shall be effective, regardless of appeal of that decision. The possibility of lease termination shall be included as a special stipulation in every lease issued to an entity that qualifies under paragraph (e)(4) of this section.

(iii) The entity shall not qualify for lease issuance or transfer under paragraph (e)(4)(i) of this section during the pendency of an appeal before the Office of Hearings and Appeals from an adverse decision by the authorized officer on any of the actions described in paragraph (e)(4)(i) of this section.

(iv)(A) Where an entity, qualified under this section, had an approved transfer of a lease under subpart 3453 of this title, the transferor retained a right-of-first-refusal, and the entity wishes to relinquish such lease if such lease would otherwise disqualify the entity under this subpart, the entity may file the relinquishment under subpart 3452 of this title. However, the entity shall:

(*1*) Submit sufficient documentation for the authorized officer to determine that, in fact, such a right-of-first-refusal exists and prevents approval or disapproval by the authorized officer of the pending relinquishment;

(*2*) Submit with the request for approval of the relinquishment a statement that action by the authorized officer on the pending relinquishment be conditioned on the execution, or lack thereof, of the assignment under the right-of-first-refusal, as well as on the approval or disapproval of the assignment, if executed, under subpart 3453 of this title;

(*3*) Submit the assignment signed by the entity as well as proof that it has been submitted to the transferor that retained the right-of-first-refusal (e.g., copy of certified mail delivery); and

(*4*) Submit the name(s) and address(es) of the transferor(s) that retained the right-of-first-refusal.

(B) If the authorized officer determines, based on the information supplied under paragraph (e)(4)(iv)(A) of this section, that the right-of-first-refusal prevents action on the pending relinquishment, the authorized officer will send, via certified mail, return receipt requested, a request for additional information to the transferor that retained the right-of-first-refusal. The request shall state that the transferor that retained the right-of-first-refusal shall comply with subpart 3453 of this title within 30 days of receipt. If the transferor that retained the right-of-first-refusal does not comply within the 30-day time frame, the authorized officer will:

(*1*) Disapprove the pending assignment and so notify the entity and the transferor that retained the right-of-first-refusal; and

(*2*) Process the request for relinquishment under subpart 3452 of this title.

(C) If the authorized officer determines, pursuant to the information submitted under paragraph (e)(4)(iv)(A) of this section, that the right-of-first-refusal does not prevent action on the request for relinquishment, the authorized officer will:

(*1*) Disapprove the pending assignment and so notify the entity and the transferor that retained the right-of-first-refusal; and

(*2*) Process the request for relinquishment under subpart 3452 of this title.

(5) Leases that have been mined out (i.e., all recoverable reserves have been exhausted), as determined by the authorized officer, may be held for such purposes as reclamation without disqualification of the entity, or any of its affiliates, under the provisions of this subpart.

(6)(i) The authorized officer shall determine the date of first production for the purposes of establishing the beginning of the bracket, if applicable.

(ii) An entity shall not be disqualified under the provisions of this subpart if each lease that the entity holds is:

(A) Producing and is within its bracket;

(B) Producing and has produced commercial quantities during the bracket.

(C) Producing and has achieved production in commercial quantities (an entity holding such a lease is disqualified under section 2(a)(2)(A) of the Act from the end of the bracket until production in commercial quantities is achieved), for leases which fail to produce commercial quantities within the bracket;

(D) Producing in compliance with the diligent development and continued operation provisions of Part 3480 of this title, for leases which began their first production of coal on or after August 4, 1976, after becoming subject to the diligence provisions of Part 3480 of this title;

(E) Contained in an approved logical mining unit which is producing coal in accordance with the logical mining unit stipulations of approval pursuant to § 3487.1 (e) and (f) of this title; or

(F) Relieved of a producing obligation pursuant to paragraphs (e) (1), (4), or (5) of this section.

* * * * *

PART 3500—[AMENDED]

7. The authority citation for Part 3500 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix); sec. 3 of the Act of September 1, 1949 (30 U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508(b)); the Act of June 8, 1926 (30 U.S.C. 291–293); the Act of March 3, 1933, as amended (47 Stat. 1487); sec. 10 of the Act of August 4, 1939 (43 U.S.C. 387); the Act of October 8, 1964 (16 U.S.C. 460n et seq.); the Act of November 8, 1968 (16 U.S.C. 460q et seq.); the Act of October 2, 1968 (16 U.S.C. 90c et seq.); the Act of October 27, 1972 (16 U.S.C. 460dd et seq.); the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm-2—460mm-4); the Independent Offices Appropriations Act (31 U.S.C. 9701).

6. Section 3502.1 is amended by adding a new paragraph (d) to read:

§ 3502.1 Who may hold leases and permits.

* * * * *

(d) Except for an assignment or sublease under § 3506 of this title, a lease for leasable minerals shall be issued only to an entity if it is in compliance with section 2(a)(2)(A) of the act (compliance is determined for Federal coal leases in accordance with § 3472.1–2(e) of this title). A lease issued to any entity in violation of this paragraph (d) shall be subject to the cancellation provisions at § 3509.4 of this title. The term 'entity' is defined at § 3400.0–5(rr) of this title."

December 2, 1986.

James E. Cason,

Acting Assistant Secretary of the Interior.

[FR Doc. 86–27519 Filed 12–4–86; 8:45 am]

#2591

rented and vacant post office boxes and assigned caller service numbers in 951.62 and 952.237b.

h. State in 951.75 that only persons or organizations' representatives listed on the Form 1093, *Application for Post Office Box or Caller Service*, may file change of address orders.

i. In section 952.14, change the payment period for reserved number fees from the postal fiscal year to the calendar year (PB 21567, 5-22-86).

58. Under section 951.6, Record of Boxholders (PB 21567, 5-22-86), the paragraph titled *Who May File* should be modified as 951.753 (PB 21568, 5-29-86).

59. * * *

60. Section 951.2 is revised to allow the acceptance of post office box rental payments of up to 90 days in advance of the due date. Rental payments of more than 90 days in advance may be accepted at the discretion of the postmaster or Station or Branch Manager (PB 21580, 8-21-86).

61. Section 952.122c is revised to provide a uniform definition of the term "customer" for application of the five post office box limit rule (PB 21560, 4-3-86).

62. Minor editorial and typographical changes have been made in 411.214, 453.2, 915.612, 919.23, 933.44, 940.134, 940.135, and 941.352.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

2. In consideration of the foregoing, 39 CFR 111.3 is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual

* * * * *

Transmittal letter for issue	Dated	Federal Register publication
* * * * *		
21	Sept. 4, 1986	51 FR

Paul J. Kemp,

Supervisory Attorney, Legislative Division.

[FR Doc. 86-27345 Filed 12-4-86; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR PARTS 3100, 3400, 3470 AND 3500

[Circular No. 2591; AA-60-87-4121-02]

Coal Management—General; Coal Management Provisions and Limitations; Oil and Gas Leasing; Leasing of Solid Minerals Other Than Coal and Oil Shale; Amendments to Incorporate Changes Required by Section 2(a)(2)(A) of the Mineral Leasing Act of 1920

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the existing regulations in 43 CFR Groups 3100, 3400, and 3500 to bring them into compliance with the requirements of section 2(a)(2)(A) of the Mineral Leasing Act of 1920. This section was added to the Mineral Leasing Act by section 3 of the Federal Coal Leasing Amendments Act on August 4, 1976. Section 2(a)(2)(A) provides that any entity, or any of its affiliates, that holds and has held a Federal coal lease for 10 years beginning on or after August 4, 1976, and which is not producing coal in commercial quantities from each such lease, cannot qualify for issuance of any other lease granted under the Mineral Leasing Act. The cutoff date was extended by the Act of December 19, 1985, from August 4, 1986, to December 31, 1986.

DATE: Effective December 5, 1986.

ADDRESS: Inquiries or suggestions may be addressed to: Director (660), Bureau of Land Management, Room 3411, Main Interior Building, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Paul W. Politzer, (202) 343-7722, Allen B. Agnew, (202) 343-7722, or Pamela J. Lewis, (202) 343-7722

SUPPLEMENTARY INFORMATION: Section 2(a)(2)(A) of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 201(a)(2)(A) (1982)) was added to the Mineral Leasing Act by section 3 of the Federal Coal Leasing Amendments Act on August 4, 1976. Section 2(a)(2)(A) is a lessee-qualification requirement which directs that any entity, or any of its affiliates, that holds and has held a Federal coal lease for 10 years when the entity, or any of its affiliates, is not, except as provided in section 7(b) of the Mineral Leasing Act, producing coal from the lease deposits in commercial quantities, shall not be issued any leases granted under the provisions of the Mineral Leasing Act. (All references to the U.S.C., unless otherwise noted, are to the 1982 edition.

The Bureau of Land Management has published guidelines for the implementation of the provisions of section 2(a)(2)(A) of the Mineral Leasing Act. The proposed guildelines were published in the Federal Register on February 15, 1985 (50 FR 6398), with a 60-day public comment period. The comment period, in response to public requests, was later extended for an additional 30 days, ending on May 13, 1985. The proposed guidelines generated 21 comments, all of which were given careful consideration during the preparation of the final guidelines. The final guidelines, including a discussion of the comments received, were published in the Federal Register on August 29, 1985 (50 FR 35125). The **SUPPLEMENTARY INFORMATION** section of the final section 2(a)(2)(A) guidelines (50 FR 35125 through 35133 (August 29, 1985)) that addressed the public comments received on the draft section 2(a)(2)(A) guidelines is hereby incorporated in this final rulemaking in its entirety, as modified by this **SUPPLEMENTARY INFORMATION** for these final regulations.

The final guidelines incorporated changes suggested in the comments on the proposed guidelines and advice rendered by the Office of the Solicitor, Department of the Interior, and are consistent with Solicitor's Opinion M-36951 (92 I.D. 537), which interpreted Section 2(a)(2)(A) of the Mineral Leasing Act.

Section 2(a)(2)(A) of the Mineral Leasing Act would have taken effect on August 4, 1986. However, the effective date was extended by the Act of December 19, 1985 (Pub. L. 99-190), from August 4, 1986, to December 31, 1986.

The Department of the Interior delayed making necessary revisions to Title 43 of the Code of Federal Regulations because of legislation pending in the Congress that would have amended section 2(a)(2)(A) of the Mineral Leasing Act. Since the Congress did not take action to amend section 2(a)(2)(A), the Bureau of Land Management on October 20, 1986 (51 FR 37202), proposed amendments to the existing regulations in Title 43 of the Code of Federal Regulations to implement the provisions of section 2(a)(2)(A) of the Mineral Leasing Act. Due to the immediacy of the effective date of section 2(a)(2)(A) of the Mineral Leasing Act, the proposed rulemaking was given a 30-day public comment period, ending November 19, 1986. This rulemaking is being made effective upon publication in the Federal Register

because it recognizes exemptions and relieves restrictions, and for good cause (5 U.S.C. 553(d)). The provisions of section 2(a)(2)(A) become applicable by operation of law on December 31, 1986. This rulemaking must be effective by that date also, so that affected parties will have some certainty regarding the status of both pending and new lease applications. If the rulemaking were not effective until sometime in January 1987, a gap would exist and whether these applicants are qualified would be in doubt. Finally, the adverse consequences of section 2(a)(2)(A) will occur by operation of law on December 31, 1986, whether or not these regulations are in effect.

The Bureau of Land Management received comments on the proposed rulemaking from 24 entities. Of these, 12 were from business entities, 3 were from trade associations, 2 were from environmental organizations, 1 was from an attorney, 2 were from state governments, and 4 were from offices of the Bureau of Land Management. All 24 comments received have been given careful consideration in the drafting of these final regulations. The comments are addressed below; the text of the regulations has been changed as appropriate.

In general, comments addressed seven specific areas: (1) Section 2(a)(2)(A) bracket, (2) pending actions and appeals, (3) producing, (4) control, certification of compliance and apparent double filing of qualifications for lease issuance, (5) the definition of the phrase "holds and has held," (6) oil and gas lease qualifications and assignments, (7) and apparent conflicts between specific provisions of proposed 43 CFR 3472.1–2(e). Following general discussion of the regulations below, the general and specific comments received on the seven specific areas are addressed.

General Discussion

Section 3 of the Federal Coal Leasing Amendments Act of 1976 added paragraph 2(a)(2)(A) to the Mineral Leasing Act. Section 6 of the Federal Coal Leasing Amendments Act added paragraph 7(b) to the Mineral Leasing Act. That paragraph provides that each Federal coal lease must satisfy the requirements of diligent development and continued operation. The phrase "amended Mineral Leasing Act" in this SUPPLEMENTARY INFORMATION refers to the Mineral Leasing Act as amended by the Federal Coal Leasing Amendments Act of 1976, and subsequent amendments. The following discussion addresses the reason for publication of regulations and the major issues concerning section 2(a)(2)(A).

1. One primary reason for the publication of these final regulations is to ensure uniform and consistent nationwide implementation of the "producing . . . in commercial quantities" requirement of section 2(a)(2)(A). Determination of compliance with this provision requires the establishment of a time frame during which the current regulatory definition of commercial quantities (1 percent of the recoverable coal reserves) must be produced from each lease for section 2(a)(2)(A) purposes. This determination of compliance is made by the Bureau of Land Management Field Offices.

2. Section 2(a)(2)(A) applies, for all practical purposes, only to the holders of Federal coal leases issued prior to enactment of the Federal Coal Leasing Amendments Act on August 4, 1976. "New" Federal coal leases, those issued or otherwise made subject to the amended Mineral Leasing Act after August 4, 1976, terminate under amended section 7(a) after 10 years if they are not producing in commercial quantities, so the prohibition of section 2(a)(2)(A) on holding such a Federal coal lease for 10 years and not producing cannot occur.

3. Section 2(a)(2)(A) is a "qualification" provision, affecting the ability of an entity, or any of its affiliates, to acquire new Federal leases granted under the Mineral Leasing Act. Section 2(a)(2)(A) is not a "diligence" provision. It is not to be equated with amended section 7(a) of the Mineral Leasing Act, which provides for production in commercial quantities at the end of 10 years after a lease issuance or after the lease becomes subject to the amended Mineral Leasing Act, nor with amended section 7(b) of the Mineral Leasing Act, which provides for diligent development and continued operation. Diligence relates to the obligation to develop a specific Federal coal lease or lose that Federal coal lease. The diligence clock is tied to the date that the Federal coal lease is readjusted (20 years after issuance), or otherwise made subject to the amended Mineral Leasing Act. The diligence production clock is independent of the section 2(a)(2)(A) 10-year Federal coal lease-holding clock. If a Federal coal lessee does not seek to qualify for new Federal leases granted under the Mineral Leasing Act (but decides rather to continue holding those Federal coal leases it currently holds), section 2(a)(2)(A) does not compel that Federal coal lessee to do anything. Section 2(a)(2)(A) requires that a lessee be "producing" coal in order to be issued a new lease under the Mineral Leasing Act. In addition, the production must constitute "commercial quantities," an amount which is not further defined in the statute. The regulations provide this definition.

4. The section 2(a)(2)(A) leasing prohibition is not limited only to Federal coal leasing. Where a Federal coal lease is in violation of section 2(a)(2)(A), the Secretary may not issue that Federal coal lessee, or any of its affiliates, any new Federal leases granted under the terms of the Mineral Leasing Act for coal, gilsonite (including all vein-type, solid hydrocarbons), onshore oil and gas (including tar sand), oil shale, phosphate, potash, sodium, and sulphur. Solicitor's Opinion M–36951 (92 I.D. 537, 546–7). The Department of the Interior's position regarding the scope of section 2(a)(2)(A) was upheld in the case of *Conoco, Inc.* v. *Hodel*, 626 F. Supp. 287 (D. Del. 1986).

General Comments

Two comments received on the proposed rulemaking stated that the publication of these regulations is a major Federal action and requires publication of an environmental impact statement. As was stated in the SUPPLEMENTARY INFORMATION section that accompanied the proposed rulemaking (51 FR 37202, 37203) on October 20, 1986: "It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required." The comments stated that the above quoted statement was not based on any environmental analysis or finding of no signficant impact. This is an incorrect assumption. As with any proposed rulemaking of this type, an Environmental Assessment was prepared by the Bureau of Land Management. It was determined by the Department of the Interior that there was no significant impact. Copies of the Environmental Assessment and attendant Finding of No Significant Impact, dated September 26, 1986, may be obtained by writing to: Director (660), Bureau of Land Management, 1800 C Street, NW., Rm. 3411, Washington, DC 20240.

Several comments stated that the proposed regulations at 43 CFR 3472.1–2(e) placed a restriction on the assignment of Federal coal leases to an entity, and any of its affiliates, that would otherwise be barred from being issued any Federal lease because the entity, and any of its affiliates, was not

in compliance with section 2(a)(2)(A). The restriction on any type of transfer of a Federal coal lease to such a disqualified entity, and any of its affiliates, is contained in 43 CFR 3453.3–1(a) when read in concert with 43 CFR 3453.2–1, and is an exercise of Secretarial discretion under section 30 of the Mineral Leasing Act (30 U.S.C. 187). This provision was added to 43 CFR Group 3400 on July 30, 1982 (47 FR 33114, 33148). This final rulemaking in no way affects the existing regulatory language regarding transfers of Federal coal leases. More importantly, and contrary to the concerns stated by many comments, Federal coal is the only commodity leasable under the Mineral Leasing Act that is subject to this regulatory provision. The final regulations have been revised to reflect that the other commodities leasable under the Mineral Leasing Act, as listed in item number 4 of the *General Discussion* above, are not subject to section 2(a)(2)(A) restrictions regarding transfers. The lease issuance prohibition, however, applies to all of the commodities listed in item number 4 of the *General Discussion* above.

It should be noted that the term "lease" used throughout the 43 CFR Group 3400 regulations is defined at 43 CFR 3400.0–5(r) to be solely restricted to Federal coal. A cross-reference from another 43 CFR Group related to another set of leasable commodities does not, by inference, alter the use of the term "lease" at 43 CFR Group 3400. For example, the cross-reference from 43 CFR 3102.5 does not alter the term "lease" as used throughout the 43 CFR Group 3100 regulations, as the terms "gas" and "oil" are defined at 43 CFR 3000.0–5 (a) and (b), respectively. The same logic holds true for the cross-reference from 43 CFR 3502.1, which does not alter the term "lease" as used throughout the 43 CFR Group 3500 regulations, as the term "leasable minerals" is defined at 43 CFR 3500.0–5(h) (51 FR 15204, 15214, April 22, 1986).

One comment stated that in at least three areas the proposed regulations were in direct conflict with either the statute or the existing rules, as well as the discussion of the statute and existing rules contained in Solicitor's Opinion M–36951. The comment then stated that the Solicitor's Opinion was inconsistent with the statute. First, the comment stated that diligent development and continued operation (section 7(b) of the Mineral Leasing Act) apply to all Federal coal leases due to the express exception in section 2(a)(2)(A). Second, the comment stated that the regulatory diligent development period for Federal coal leases issued prior to August 4, 1976, is equivalent to the section 2(a)(2)(A) 10-year holding period. Third, the comment stated that the use of floating 10-year brackets for determining compliance with the section 2(a)(2)(A) continuing production obligation is not allowed, based on the first two statements.

The arguments did not persuade the Department of the Interior to reconsider the analysis and conclusions in Solicitor's Opinon M–36951. Section 2(a)(2)(A)'s relevant part states:

> When such entity is not, except as provided for in section 7(b) of this Act, producing coal from the lease deposits in commercial quantities . . . . 30 U.S.C. 201(A)(2)(A)

The express exception reference to "section 7(b)" can only be inferred to state that if a Federal coal lease is subject to the amended Mineral Leasing Act "diligence," then the section 2(a)(2)(A) production requirement is relieved simultaneously with the relief of the amended section 7(b) production requirement, when such relief is granted in accordance with the amended section 7(b) conditions for relief. The section 7(b) production requirement can be relieved by *force majeure* suspension or by payment of advance royalty in lieu of continued operation, consistent with amended section 7(b)'s limitations (i.e., no less than the production royalty that would have been paid and for not more than 10 years after the date that the lease became subject to the amended Mineral Leasing Act's diligence provisions). The section 7(b) conditions of diligent development and continued operation attach to a Federal coal lease only after it becomes subject to the amended Mineral Leasing Act. See Solicitor's Opinion M–36939, 88 I.D. 1003.

The above analysis does *not* mean that Federal coal leases that have not yet been made subject to the amended section 7 of the Mineral Leasing Act are *not* subject to conditions of diligent development and continued operation. The original section 7 of the Mineral Leasing Act, which had no subsection (b), did require Federal coal lease-specific diligence requirements (30 U.S.C. 207 (1970)). Pre-August 4, 1976, Federal coal leases were issued subject to those conditions, as implemented in the minimum production or comparable Federal coal lease clause. The above analysis means only that the amended section 7(b) is not applicable to these pre-August 4, 1976, Federal coal leases until they are made subject to the amended Mineral Leasing Act.

The Department of the Interior was not persuaded by this comment, when it published the final guidelines implementing section 2(a)(2)(A) (50 FR 35125, August 29, 1985), and the Department of the Interior is still not persuaded by this comment that Congress intended amended section 7(a) to be prospective (in its produce-in-10-years and royalty provisions), but that amended section 7(b) be retroactive. Congress never distinguished among the subsections of amended section 7 in discussing its prospective application. Congress recognized the dual production obligations of section 2(a)(2)(A) and section 7(b) by including the express exception-of-production language to state that a Federal coal lease, with its "diligence" production obligations under section 7(b) suspended, would also have its production obligation for section 2(a)(2)(A) suspended. Until a Federal coal lease becomes subject to the amended Mineral Leasing Act "diligence" requirement, its only production obligations, if any, are those established in the pre-August 4, 1976, Federal coal lease terms. After a Federal coal lease becomes subject to the amended Mineral Leasing Act, the section 7(b) "diligence" requirements apply.

As stated above, section 2(a)(2)(A) is *not* a lease-specific diligence provision, but is a lessee-qualification requirement. The question of whether the diligence provisions of the amended section 7 applied by operation of law to all coal leases in existence on August 4, 1976, the date of the amendment, is not a matter addressed by this rulemaking. This question is currently before the U.S. District Court for the District of Columbia (*NRDC* v. *Burford*, Civil No. 82–2763), where the plaintiffs have recently dropped their additional allegations that issuance of the 1982 diligence regulations violated the National Environmental Policy Act and the Administrative Procedure Act.

Regarding Federal coal leases that are not yet subject to the amended Mineral Leasing Act, the Department of the Interior adopted 10 years as the appropriate time during which a lessee meets its commercial quantities obligation under section 2(a)(2)(A) by producing coal under an approved plan of operations. The Federal coal lease-holding period for the section 2(a)(2)(A) prohibition, however, is independent of the time frame over which production may be measured. The period over which commercial quantities will be measured is not tied to August 4, 1976. Neither the statute nor the regulations prescribe such a time frame (Solicitor's Opinion M–36951, 92 I.D. 537, 543). The beginning of the section 2(a)(2)(A)

production bracket may begin as late as the date that coal is first produced on or after August 4, 1976. The Department of the Interior concluded, after examining the comments and considering alternative ways of determining commercial quantities, that a 10-year period for determining commercial quantities is appropriate, and that it should begin on the date that coal is first produced on or after August 4, 1976. In all cases, the operative quantity to be used in determining whether a Federal coal lease is producing in commercial quantities is 1 percent of the recoverable coal reserves, as the term "commercial quantities" is currently defined by regulation at 43 CFR 3480.0–5(a)(6) (1985). For further clarification and discussion on the issue of the section 2(a)(2)(A) bracket, see *Specific Comment* number 1, below.

Two comments stated that the "simplest and most effective way to ease the burdens of Section 3 [sic] enforcement would be for the Department to publish a list which indicates just which companies are barred from receiving new MLA leases and revise it at appropriate intervals. While the list might not be able to detail all subsidiaries and parents of each holder of a lease who is affected by the section 3 prohibition, it would clearly aid the authorized officers in the field and provide warning and notification to companies affected by section 3." The Department of the Interior accepts this advice, and will make such a list available to any member of the public upon request.

The Bureau of Land Management developed its first such list in the spring of 1985 and has been updating it ever since. The list is currently updated weekly, based on the previous week's activities regarding arm's-length lease assignments, relinquishments, approvals of logical mining units determined to be producing, and statutory relief from production requirements, where applicable. The list is not deemed to be confidential in any manner. The list should not be considered as final adjudication by the Bureau of Land Management of whether an entity, and any of its affiliates, is or is not qualified under section 2(a)(2)(A), but is merely an indication of such status. Copies of the weekly list are available to the public and any other concerned party by writing to the following address: Director (660), Bureau of Land Management, 1800 C Street NW., Rm. 3411, Washington, DC 20240.

One comment stated that preference right leases, if applications are still pending before the Bureau of Land Management, should not be prevented from being issued, and inquired as to the effect of section 2(a)(2)(A) on lease modifications. Another comment stated that emergency leases should not be prevented from being issued. The Department of the Interior is without authority to alter the intent of Congress. Section 2(a)(2)(A) states, in part, that the "Secretary shall not issue a lease or leases under the terms of this Act. . . ." The Solicitor's Opinion M–36951 stated that the intent of Congress in using "Act" when it added section 2(a)(2)(A) to the Mineral Leasing Act referred directly to the Mineral Leasing Act of 1920, as amended and supplemented, not the terms of the Federal Coal Leasing Amendments Act of 1976, as some have interpreted. This was argued in the District Court in *Conoco, Inc.* v. *Hodel*, in which the Court upheld the Department of the Interior's interpretation (626 F.Supp 287, D.Del. 1986). Therefore, neither preference right leases nor emergency leases for Federal coal may be issued to an entity, or any of its affiliates, if it holds a Federal coal lease that would otherwise disqualify the entity, or any of its affiliates, under section 2(a)(2)(A) from being issued a lease granted under the Mineral Leasing Act. However, lease modifications under section 3 of the Mineral Leasing Act (30 U.S.C. 203) do not involve issuance of new Federal coal leases. The Bureau of Land Management will continue to consider lease modifications without regard to section 2(a)(2)(A), because without lease modifications many bypass situations could result.

Two comments stated that revisions to the final guidelines implementing section 2(a)(2)(A) should be made to conform the guidelines to the final regulations, as adopted. The Department of the Interior agrees with this recommendation, and the Bureau of Land Management intends to publish revised guidelines in 1987.

Finally, several comments stated that the definitions in the proposed rulemaking were confusing, partly because of the repetitive use of the phrase "for purposes of section 2(a)(2)(A)." To avoid such confusion, all of the definitions have been consolidated and are contained in § 3400.0–5(rr).

Specific Comments

1. *Section 2(a)(2)(A) Bracket.* One comment stated that an assignment "without notice of a short section 2(a)(2)(A) bracket by an Interior official might come as quite a shock to a lessee and could frustrate entirely its section 2(a)(2)(A) compliance strategy." The comment also stated that a prior written notice should be given to the lessee of a proposed section 2(a)(2)(A) bracket assignment decision, together with the reasons therefore. Two comments stated that the Department of the Interior needed to articulate more clearly the purpose and function of this section 2(a)(2)(A) bracket concept in the final rulemaking.

Another comment recommended that the regulatory proposal be expanded to specifically address "which Bureau of Land Management authority is to establish a section 3 [sic] 'bracket' for each lease and to mandate that such a 'bracket' be established for each pre-76 [sic] lease immediately."

Another comment stated that the proposed use of a 10-year section 2(a)(2)(A) bracket constituted a "terse and basically unintelligible definition with absolutely no discussion of the meaning of the term or of the justification for making use of brackets." The comment further continued, stating that "the fact is that section 3 [sic] and section 7 *must* be subject to similar interpretations. The provisions were developed . . . as parts of the same statute. . . . they both establish ten year time frames." (Emphasis in original.)

These specific comments, as well as the discussion of section 2(a)(2)(A) brackets in the *General Comments* section above, led the Department of the Interior to consider carefully the proposed regulatory discretion regarding the assigning section 2(a)(2)(A) brackets versus the establishment in this final rulemaking of a fixed, regulatory time frame. The comments expressed concern about potential abuse by Bureau of Land Management Field Office personnel establishing section 2(a)(2)(A) brackets and, upon subsequent reevaluation, reestablishing the section 2(a)(2)(A) brackets. To alleviate this concern, and to establish a consistent, nationwide policy, the Department of the Interior has determined that it is appropriate to establish a specific section 2(a)(2)(A) brackets in this final rulemaking.

As noted earlier, section 2(a)(2)(A) provides no definition of commercial quantities, leaving this to the discretion of the Secretary. Solicitor's Opinion M–36951 (92 I.D. 537, 543–46). By regulation, the amount has been set at 1 percent of recoverable coal reserves. The section 2(a)(2)(A) guidelines adopted the policy of utilizing the amended section 7(a) 10-year production time frame as the basis for producing in commercial quantities under section 2(a)(2)(A).

The comments stated that this 10-year period is appropriate. Therefore, the section 2(a)(2)(A) bracket has been set in the final rulemaking as 10 years from

date coal is first produced from the eral coal lease on or after August 4, 1976, where the first production occurs before the lease becomes subject to the amended Mineral Leasing Act. A lessee who has held a Federal coal lease for 10 years and who is producing coal under an approved plan of operations for mining will qualify, and any of its affiliates will qualify, for new mineral leases granted under the Mineral Leasing Act at any time during the section 2(a)(2)(A) bracket. If the lessee meets its commercial quantities requirement of producing 1 percent of recoverable reserves during the section 2(a)(2)(A) bracket, the lessee, and any of its affiliates, will qualify for new mineral leases granted under the Mineral Leasing Act thereafter, provided the lessee is "producing" coal at the time of determination of lessee qualification. If the lessee does not meet its commercial quantities requirement of producing 1 percent of recoverable reserves by the end of the section 2(a)(2)(A) bracket, the lessee, and any of its affiliates, will no longer qualify for new mineral leases granted under the Mineral Leasing Act after the bracket ends (i.e., 10 years after the date that coal is first produced from the lease on after August 4, 1976). This qualification will continue until the see produces the commercial quantities amount 1 percent. When the lessee does in fact produce 1 percent from each such Federal coal lessee, the lessee, and any of its affiliates, will again qualify for new mineral leases granted under the Mineral Leasing Act, provided the lessee is "producing" coal at the time of qualification. The 1 percent of recoverable coal reserves that must have been produced shall be 1 percent of the recoverable reserves in existence at the beginning of the 10-year section 2(a)(2)(A) bracket.

In all circumstances, the "producing" requirement is relieved, and the section 2(a)(2)(A) bracket is extended, if necessary, by the duration of an approved suspension under section 39 of the Mineral Leasing Act of under section 7(b) of the amended Mineral Leasing Act.

It must be emphasized that section 2(a)(2)(A) is independent of the production obligations under section 7 of the amended Mineral Leasing Act. However, where the coal is first produced from a Federal coal lease after is becomes subject to the amended eral Leasing Act, production which ts the commercial quantities uirements of the amended section 7 will also satisfy the commercial quantities requirement of section 2(a)(2)(A).

The only relief from a section 2(a)(2)(A) bracket (other than extension due to a suspension under section 39 or amended section 7(b) occurs when a lease is committed to an approved logical mining unit. Production from an approved logical mining unit satisfies both the "producing" and the "commercial quantities" requirements under section 2(a)(2)(A) for all Federal coal leases committed to the unit, whether producing or not. Thus, the lessee, and any of its affiliates, holding any Federal coal lease that is committed to an approved logical mining unit qualifies for new mineral leases granted under the Mineral Leasing Act provided that coal is being produced from the logical mining unit at the time of qualification. If the logical mining unit fails to produce coal in commercial quantities under the terms of its approval, then the Federal coal leases contained in the approved logical mining unit will not have satisfied their commercial quantities requirement for purposes of section 2(a)(2)(A) thereafter to the extent that such qualification was based on production from the approved logical mining unit.

These provisions ensure that each Federal coal lease is not only producing in commercial quantities, as prescribed by section 2(a)(2)(A), but also is not being held for speculative purposes. In all circumstances, the lessee must be producing coal unless one of the statutory provisions authorizes a cessation. This was, and still is, the clear intent of the Congress, as expressed in the Federal Coal Leasing Amendments Act of 1976.

2. *Pending actions and appeals.* Several comments stated that the final guidelines for implementation of section 2(a)(2)(A) included 6 administrative actions which permit a lessee holding a noncompliance lease to avoid the section 2(a)(2)(A) sanction: relinquished lease (thus no longer holds); arm's length assigned lease (thus no longer holds); approved, producing logical mining unit (thus the production obligation is being satisfied); approved section 39 suspension of operations and production in the interest of conservation (thus the production obligation is suspended); approved *force majeure* suspension under amended section 7(b) (thus the production obligation is suspended); and payment of advance royalty in lieu of continued operation under amended section 7(b) (thus the production obligation is satisfied by the in lieu payment). However, the proposed rulemaking only allowed pending applications for 3 of these 6 actions to avoid disqualifying an entity, or any of its affiliates, during the pendency of the action before the Bureau of Land Management.

As the comment correctly stated, an applicant for a section 39 or section 7(b) lease suspension is not protected during the pendency of the application, "yet processing those suspension applications is much more time-consuming than is processing relinquishment, assignment, or, even, LMU applications." Requests for relinquishments and assignments and for establishment of logical mining units are relatively routine and are approved in most cases, i.e., when statutory and regulatory requirements are satisfied. However, qualification for a suspension has very stringent tests that must be met. The tests associated with a request for a suspension are not readily met merely by compliance with the law and regulations, in contrast to pending requests for relinquishments or assignments or approval of a logical mining unit. This is 1 reason that the Department of the Interior determined that it will not allow lessees to be qualified during the pendency of requests for suspensions. In addition, there are approximately 12,000 oil and gas leases issued annually. Processing such applications for suspensions for coal leases may take several months, if not longer, and could, if the suspension requests are denied, result in the overwhelming administrative burden of having to cancel, terminate, or revoke many thousands of oil and gas leases retroactively, as well as leases for other Mineral Leasing Act minerals, that were issued during the pendency of such requests to the Bureau of Land Management. Further, if the comment were adopted and if the Department of the Interior were to allow entities to obtain Mineral Leasing Act mineral leases during the pendency of a suspension, the Department of the Interior would be as flooded with requests for these suspensions as it currently is for protests/appeals/civil suits on Federal coal lease readjustments (more than 100 as of September 30, 1986). The Department of the Interior simply does not have the manpower or the available budget to handle such an administrative workload.

Two comments stated that an addition should be made to the pendency language regarding Congressionally authorized (not Congressionally required) exchanges; for example, where a request has been made to the Bureau of Land Management pursuant to the

Congressionally authorized I-90 exchange legislation or the Congressionally authorized alluvial valley floor exchange legislation (i.e., the Surface Mining Control and Reclamation Act of 1977). The Department of the Interior has determined that, although Congress has authorized such exchanges, such legislation does not confer any valid existing rights that require the exchanges to be consummated. Therefore, these comments were rejected.

Several comments stated that an appeal of an adverse decision by the Bureau of Land Management on any of the 3 listed pendency actions contained in the proposed rulemaking should continue the requestor's immunity from the section 2(a)(2)(A) disqualification. One comment stated: "Otherwise, the rule will have a chilling effect upon the full exercise of an entity's rights and may be an infringement on its due process rights." One comment stated that: "Moreover, it conflicts directly with 43 CFR 4.21(c) [sic] which states that 'a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal.'" However, the introductory language in 43 CFR 4.21(a) states: "Except as otherwise provided by law or other pertinent regulation, a decision . . . ." 43 CFR 3472.1-2(e)(4) has been clarified to state that the decision by the Authorized Officer regarding any of the three pending actions shall be effective immediately, regardless of subsequent appeal of that decision. Therefore, the suspension provision at 43 CFR 4.21(a) will not be triggered if an entity files an appeal from an adverse decision of the Bureau of Land Management in one of the 3 pending categories retained in this final rulemaking.

When an administrative decision is effective, pending appeal, the affected entity has the option of seeking a stay from the Interior Board of Land Appeals or going directly to court to challenge the effectiveness of the decision. When an entity has immediate access to judicial relief, its due process rights cannot be said to be violated.

The comment further stated that: "By denying an entity the right to obtain a lease pending a good faith appeal, BLM is denying that entity's legal right under the 5th Amendment and 14 Amendments [sic] to the Constitution in the absence of any statutory provisions directing that the entity's rights be so impaired. This provision is clearly without legal support and must be deleted." To the extent that this is a complaint that due process rights are being violated (5th Amendment to the Constitution), the Department of the Interior has addressed it by stating the right to challenge judicially the fact that the decision has been put into effect. To the extent that this is a claim that property is being taken (5th Amendment to the Constitution) or that "equal protection" rights are being violated (14th Amendment to the Constitution), Congress possesses and has exercised the power to determine what entities qualify under the Mineral Leasing Act to apply for and be issued mineral leases. The Department of the Interior is under no constitutional or statutory obligation to promulgate regulations regarding requests for approval of actions pending before the Bureau of Land Management, nor does an application for a lease under the Mineral Leasing Act rise to the level of a Constitutionally protected "property" right.

In fact, the Department of the Interior in the alternative could have promulgated regulations without allowing any requests for actions pending before the Bureau of Land Management to relieve the applicant or requestor from the section 2(a)(2)(A) disqualification. From that standpoint, the Department of the Interior believes it has taken a positive action to ensure that there is no infringement on due-process rights.

These comments were rejected, with the exception of the regulatory clarification noted above.

Finally, two comments stated that the Bureau of Land Management should consider the dual pendency of requests before it. After careful consideration, 43 CFR 3472.1-2(e)(4) has been amended to allow for this in a specific, and justified, limited universe of Federal coal leases. In many instances, Federal coal leases were received by the current record title holder by arm's-length assignment. Some of the original assignors retained the right-of-first refusal in the assignment document. Therefore, even though the current record title holder wants to relinquish such a Federal coal lease, the record title holder must first try to locate the original assignor(s) to determine whether it still exists and if so, whether the original assignor wants to have such Federal coal leases reassigned to it.

This is a time-consuming process as to both determinations. It is further complicated by the fact that the original assignor, if found and if it wants the Federal coal leases to revert to it, must be able to obtain sufficient bonds in order for the executed assignment to be submitted to the appropriate Bureau of Land Management State Office for approval. Therefore, 43 CFR 3472.1-2(e)(4) has been revised for this specific situation to allow the filing of a relinquishment by the current record title holder of such a Federal coal lease, conditioned on the execution of lack thereof, of the reassignment to the original assignor only where a right-of-first-refusal can be demonstrated to be the sole reason for the filing of the conditional request for relinquishment.

In such cases, the Bureau of Land Management will not act on the relinquishment request because it does not control the execution of such a reassignment. However, the current record title holder will also have to file a simultaneous request for arm's-length assignment. This action will allow the Bureau of Land Management to issue a request to the potential assignee(s) for further information and/or execution and submittal of the assignment document and the posting of a bond sufficient to allow the assignment to be approved. If the potential assignee(s) (i.e., the original assignor(s) that retained the right-of-first-refusal) does not comply with the Bureau of Land Management's request within 30 calendar days from date of receipt of the request, the Bureau of Land Management will disapprove the assignment and act on the pending relinquishment request. The failure of the potential assignee(s) (i.e., original assignor(s) retaining the right-of-first-refusal) to comply with the Bureau of Land Management's request removes the condition from the conditional request for relinquishment of the Federal coal lease. This rulemaking modifies the 90-day period for submittal of applications for approval of a lease transfer for those tranfer applications submitted by the potential assignees within this limited category. These comments were accepted, as modified.

3. *Producing.* Several comments stated, in essence, that the definition of "producing" fails to reflect the reality of mining by severely restricting the exceptions to its "daily" severance requirements. The comments stated that the Department of the Interior failed to take into account that there are many events which regularly occur in the course of an ongoing mining operation that result in the temporary cessation of actual coal production. The comments suggested that the list of general exceptions be broad enough to take into account mining-related occurrences that customarily and in the course of coal

production necessitate the temporary cessation of mining activities. Such variances include, but are not limited to: 4-day work weeks; miners' vacations; temporary, limited shutdowns for equipment maintenance; withdrawal of closure orders under the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 814(b) and (d), and § 817(a)); cessation orders under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1271(a)(2)); temporary, limited shutdown of a customer's power plant; contract requirements stating that mining only take place intermittently; and formal lease suspensions under section 39 or section 7(b) of the Mineral Leasing Act. In addition, the comments pointed to temporary, limited *force majeure* mine closing, which may result from strikes by rail workers or truck drivers, coal buyer's operations of its power plants that require the coal buyer to temporarily stop taking coal shipments for a limited duration of time, and labor disputes.

It was not the intent of the proposed rulemaking to compromise standard industry operating practices. That is why the rulemaking was couched in terms of "such reasons as," not "the following reasons." Allowing standard industry operating practices to govern "producing" is less burdensome to the mining industry and more administratively efficient for the Bureau of Land Management. It also provides a satisfactory basis from which the Authorized Officer can determine whether the mining operation is "producing". Under this approach, the Authorized Officer will determine whether the mining operation is "producing" in accordance with the approved plan of operations. Standard industry operating practices will be used as the primary basis for determining whether the mining operation is "producing;" but it must be stressed that conformity with standard industry operating practices is not dispositive of "producing," and variances from the practices may be required where case-specific conditions warrant such a variance. However, the burden of establishing that a mining operation is "producing" is on the operator/lessee. Cessation of production for reasons of *force majeure* do not exempt the lessee from section 2(a)(2)(A), unless production is suspended under section 7(b) after the lease becomes subject to the amended Mineral Leasing Act. It should be noted that interruptions of mining operations due to such events as floods, mine fires, and roof falls or rock bursts, may be sufficient cause to apply for a section 39 suspension of operations and production.

The definition of "producing" has been revised to reflect the original intent of the proposed rulemaking, as discussed above. As one comment accurately stated: "The purpose of Congress in enacting section 3 [sic] was to eliminate perceived speculation in federal coal where much coal was leased at low cost and few mines were opened as the 'speculators' waited for the price of coal to rise. Beginning a mine operation requires substantial investment. The lessee has significant costs and has no reason not to mine." The Department of the Interior agrees with these statements.

One comment questioned whether "sale of coal from stockpiles" referred to the market transaction or to the physical removal of coal. "Sale of coal from stockpiles" was intended to refer to the market transaction and the proposed rulemaking's intent was to differentiate that type of transaction from "coal is being processed, loaded, or transported from the point of severance to point of sale." See also the responses to the previous documents, above.

One comment stated that the proposed rulemaking would significantly expand the clear requirement of section 2(a)(2)(A) to make production in commercial quantities a requirement for the duration of the subject lease. The comment continued: "No statutory, legislative history, or practical reasons is [sic] presented by BLM, and none is available, to support such an expansion of the law." This comment ignores the clear, express language of section 2(a)(2)(A) (30 U.S.C. 201(a)(2)(A)), which states, in part: "when such entity *is not*, except as provided for in section 7(b) of this Act, *producing* coal from the lease deposits in commercial quantities . . ." (emphasis added) as opposed to stating "when such entity has not . . . produced coal from the lease deposits in commercial quantities." Congress phrased section 2(a)(2)(A)'s producing requirement in the present tense and thus clearly intended that this requirement continue for the duration of the subject lease. It should be noted, as discussed in the *General Discussion*, *General Comments*, and *Specific Comments*, number 2., above, that there is, at certain times and under specific circumstances, statutory relief available from the continuing section 2(a)(2)(A) requirement to be producing coal in commercial quantities.

4. *Control.* One comment, noting that the Office of Surface Mining and the Minerals Management Service are also considering ownership/control regulations relating to coal activities, stated: "I urge you to coordinate with the Office of Surface Mining and the Minerals Management Service. A single definition may not be appropriate for all 3 agencies. However, the impacts of different definitions should be recognized and acknowledged."

The following discussion concerns the "controlled by or under common control with" language of section 2(a)(2)(A) of the Mineral Leasing Act. Language identical to that quoted in the previous sentence is contained in the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1257(b)(5)). The Office of Surface Mining Reclamation and Enforcement proposed regulations related to it control concept on April 5, 1985 (50 FR 13724), and reproposed those regulations for further consideration April 16, 1986 (51 FR 12879).

The Minerals Management Service intends to propose regulations on coal product valuation in the near future. That proposal will also address a control concept.

The Bureau of Land Management will continue to work closely with both the Office of Surface Mining Reclamation and Enforcement, the Minerals Management Service, and the Office of the Solicitor to determine the appropriate control concepts for all 3 Federal agencies. The responses to the comments addressed below relate solely to the language of section 2(a)(2)(A) of the Mineral Leasing Act, not the Surface Mining Control and Reclamation Act of 1977, and are not intended to resolve or address any issues currently before the Office of Surface Mining Reclamation and Enforcement or the Minerals Management Service.

One comment was highly supportive of the proposed control concept.

All comments focused on the degree of ownership that will create a presumption of control—ownership of 20 through 50 percent of the instruments of ownership of the voting securities of an entity. Most of the comments were concerned about stock ownership in companies and stated that, rather than creating a presumption of control, ownership of 20 through 50 percent should create a presumption of noncontrol unless the owner has a majority representation on the board of directors or by some other arrangement has actual control of the corporation. Several of these comments cited cases in which courts stated that stock ownership alone, when less than a majority, did not necessarily demonstrate control of the company. See, e.g., *United States* v. *Carr*, 543 F.2d 1042, 1050 (2d Cir. 1976); *Gilbert* v. *El*

Paso Company, 490 A.2d 1050, 1055, (Del.Ch. 1984); *Kaplan* v. *Centrex Corp.*, 284 A.2d 119, 122–23 (Del.Ch. 1971). The Department of the Interior does not disagree with statements in the above-cited decisions that stock ownership of less than a majority does not necessarily demonstrate control of the corporation. That is why the Department of the Interior's 20 through 50 percent category only creates a presumption of control. The cited cases, however, only indicate that it may not be possible to determine who or what entity has the ultimate control, not that it is inappropriate to presume control. Moreover, as noted in Solicitor's Opinion M–36951, several courts have found that actual control exists when the single largest stockholder owns less than the majority of the voting interests in the corporation. See *Securities and Exchange Commission* v. *R.A. Holman & Co.*, 377 F.2d 665, 667 (2d Cir. 1967); *Gottesman* v. *General Motors Corp.*, 279 F.Supp. 361, 368 (S.D. N.Y. 1967). If an entity does not believe that the presumption of control is applicable to it, then it can provide information rebutting the presumption or declaring who, in fact, is in control.

The presumption of control can be rebutted by evidence that the single largest shareholder is incapable of control or has consistently been denied control by block voting of smaller shareholders. However, the burden of proof of noncontrol properly rests with the owner of the 20 through 50 percent interest, not with the Bureau of Land Management or some third party, neither of which has the information on which a control determination can be accurately made. The Department of the Interior is not under the obligation to investigate these entities, and any of their affiliates. The lease applicant is under the obligation to show that it is qualified. The presumption standard adopted here materially aids making such determinations to carry out this responsibility.

The comments that criticized the Department of the Interior's standards for *Presuming* control do not persuade the Department that the standards for *Presumption* are inappropriate. Rather, they simply demonstrate the variety of circumstances in which the *Presumption* could be rebutted because "actual control" will, after scrutiny, be determined to be different than what one *presumes* upon initial examination. The Department of the Interior recognizes that, under a variety of circumstances, *proper proof will rebut the presumption*. The *presumption*, however, serves the purpose of identifying those situations in which rebuttal evidence should and must be submitted for competent determinations of control to be made.

Other comments on the presumption of control definition argued that partners owning less than a majority of the partnership, or limited partners who may have contracted with general partners to manage the partnership, should not be presumed to be in control. One comment further stated that "[m]anagement control, contract mining operations operator responsibility, and other relationships that constitute control for a large proportion of corporations are simply ignored by the proposed rulemaking."

Congress did not require the Department of the Interior to determine control by examining management committees or other management or contract arrangements. It only dealt with the instruments of ownership of an entity. Moreover, simply because limited partners or corporations have contracted with other entities to manage their ownership interests, this does not necessarily insulate them from retaining actual control of the partnership, corporation, contractor, or operator. Although limited partners may not generally exercise control over the partnership's activities, the final rule does not address this or any other specific management arrangement. If "control" is as obviously absent as the comments suggest, it should be a relatively simple matter for a lease applicant to rebut the presumption.

Again, the 20 through 50 percent category only creates a *presumption* of control, which the affected entity has an opportunity to rebut through the submission of evidence that it, in fact, is not in control of the entity holding the section 2(a)(2)(A) noncompliance coal lease.

Another comment stated that an owner of a 20 through 50 percent interest in an entity, who is not exercising actual control over that entity but who has the "theoretical" ability to control it in the future (e.g., by electing a new board of directors), should not be presumed to be in control. The Department of the Interior is interested in development of coal leases. If an entity has in its power the ability to develop a coal lease through restructuring the management of an entity in which it has a 20 through 50 percent interest (see *Essex Universal Corp.* v. *Yates*, 305 F.2d 572 (2d Cir. 1962)), it can avoid the section 2(a)(2)(A) prohibition against new mineral lease issuance under the Mineral Leasing Act by exercising that power. Thus, the Department of the Interior does not adopt the comment that control cannot be presumed simply because the single largest shareholder has failed to assume actual management control of the lease holding company. The Department of the Interior will continue to presume that control is in the hands of the company owning the largest single block of stock or other instruments of ownership in a publicly traded or widely held corporation. However, again, the *presumption* of control *can be rebutted* by submission of evidence that such an entity, in fact, does not have the power to exercise such control.

Another comment stated that it was inappropriate for the Solicitor in Opinion M–36951 to cite two cases discussing "control" "that may be appropriate in the context of securities violations, farm investment credit and some Internal Revenue Service applications" because Interior is dealing with a different problem than the statutes and regulations related to those areas. As noted above, Congress was silent as to the definition of "control" in the amendments to the Mineral Leasing Act enacted in the Federal Coal Leasing Amendments Act of 1976. It thus left that definition to the Secretary's discretion. The Department of the Interior believes it is better, and more reasonable and appropriate, in establishing the criteria to determine control or presumption of control, to look to other Federal statutes, their implementing regulations, and court decisions related to those statutes and regulations, which have dealt with this issue and have established standards by which to make "control" determinations.

If an entity does not believe that the presumption of control is applicable, then it is up to the entity to provide information rebutting the presumption or declaring who, in fact, is in control. The Department of the Interior prefers to avoid erroneously disqualifying an entity that does not control other entities, or any of their affiliates, that hold noncompliance Federal coal leases. The burden of proof, however, is on the lease applicant. A lease applicant that does not provide rebuttal information or otherwise declare who controls the corporation through ownership of stock, or other instruments of ownership is agreeing that, if the Department of the Interior applies its presumption of control, the Department of the Interior will correctly identify who is in control of the entity, and any of its affiliates. The self-certification process at 43 CFR 3472.1–2(e)(2) has been amended to reflect this procedure.

Another comment stated that the term "interest" in a Federal coal lease should be applied from the standpoint of those

entities that control the "working" interest in a lease, because this is the interest which can actually develop the lease. The Department of the Interior agrees, and has revised its "hold and has held" definition to indicate that working interests, rather than property interests (which could include nonparticipating interests), are the "holding" interests subject to section 2(a)(2)(A). However, this comment does not affect the definition of "control," because "control," as used in section 2(a)(2)(A), relates to the structure and ownership of the business concern which "holds" the lease, not with the lease "holding" itself. See also the responses to comments received on the "holds . . . and has held" provision of the proposed rulemaking below.

One comment challenged the use of 20 percent as the lowest limit for percentage in the presumption of control category, contending that "BLM's proposal would, therefore, unduly narrow the effect of the statute without explanation, analytical support, or even the presentation of a rudimentary legal theory to support this untenable change in the Department's position." First, there has been no change in the Department of the Interior's position. This is the first time that the Department of the Interior has promulgated a final rulemaking dealing with the issue of control for the purposes of lease-issuance qualification under section 2(a)(2)(A) of the Mineral Leasing Act. Second, the 10 percent ownership of stock or other instruments of ownership relates solely to acreage attribution, 30 U.S.C. 184(e). Acreage attribution has nothing to do with corporate management control or affiliation. If the Congress had intended for the Department of the Interior to use acreage attribution as the basis for defining control for the purpose of lease-issuance qualification, the Congress would have so ordered the Secretary of the Interior by statute. However, in the absence of such an order from Congress, the 10 percent used for acreage attribution bears no relevance to control because Congress established the 10 percent merely to avoid the "administrative nightmare" of *pro rata* acreage attribution to each stock owner in a corporation. S. Rep. No. 1549, 1960 U.S. Code Cong. & Ad. News 3313, 3325. Although this comment was rejected, it does serve as the basis for the following discussion regarding how the lowest limit of "20 percent" for the "20 through 50 percent" was derived, constituting a presumption of control.

The Department of the Interior had to choose a number less than 50 percent as a lowest limit of percentage for the presumption of control. The fact that it may be hard to justify selecting one number over the rest of the numbers in a given range does not prohibit the Department of the Interior from selecting a lowest limit. The Department of the Interior did not want arbitrarily to exclude any percentage that has been held to constitute control. See *Gottesman* v. *General Motors Corp.*, supra, where 23 percent stock ownership constituted control. Therefore, the Department of the Interior chose a lowest limit that is less than the 23 percent in *Gottesman*, but preserved the right of entities to rebut the presumption. Also, the Department of the Interior should not make a selection that excludes one of the potentially more controversial ownerships, when the opportunity to rebut the presumption of control is clearly provided to any entity affected by the lowest limit.

Also, the definition has been amended to provide that ownership less than 20 percent creates a presumption of noncontrol, rather than conclusive evidence of noncontrol. The burden of rebutting this presumption rests with the Department of the Interior. The burden of presenting rebuttal information is clearly on a party challenging a determination of noncontrol by the Department of the Interior, where there is less than 20 percent ownership of the stock or other voting securities by the entity.

Several other comments were received regarding the self-certification provisions at proposed 43 CFR 3472.1–2(e)(2) and the Authorized Officer's determination that there is compliance with section 2(a)(2)(A) on the date of lease issuance at proposed 43 CFR 3472.1–2(e)(1)ii). Most expressed concern that there appeared to be two lessee-qualification dates resulting in the lease applicant potentially having to submit 2 qualification statements. The intent of the provision was that, at the time that a lease was offered, the lease applicant would have to self-certify that it, and all of its affiliates, were not in noncompliance with section 2(a)(2)(A) of the amended Mineral Leasing Act. This is a simple clarification of the information already required to be submitted in the contents of qualification statements (see existing 43 CFR 3472.2–2). The apparent requirement for a double submission is nonexistent. On the subsequent date of lease issuance, the affected Federal coal leases must be producing in commercial quantities in order for the lease applicant to be qualified to be issued the lease. The determination that the affected Federal coal leases are in compliance is made by the Authorized Officer both on the date of determination of lessee qualification and on the date the lease is issued. This is because the date that the Authorized Officer makes the determination of lessee qualifications normally precedes the date of lease issuance. There is no requirement for a dual submission of information on the part of the lease applicant. These comments were rejected.

5. *Holds and Has Held.* Several comments received on this issue questioned Solicitor's Opinion M–36951, the draft and final implementation guidelines for section 2(a)(2)(A), and the proposed rulemaking. The major concern was that a Federal coal lessee's holding period should not be attributable to the ultimate parent corporation or any of its affiliates or subsidiaries. The Department of the Interior is not persuaded by any of the arguments presented regarding this specific issue to reexamine the Solicitor's Opinion M–36951 for possible revision on this issue nor to reexamine Appendix C to the final guidelines for implementation of section 2(a)(2)(A) of the Mineral Leasing Act. In fact, the Department of the Interior believes it appropriate here to repeat a portion of that Appendix C in this **SUPPLEMENTARY INFORMATION** for clarification of how the "holds . . . and has held" provision is attributable to corporate entities, and any of their affiliates or subsidiaries from the aspect of "controlled by or under common control with." See the following 3 paragraphs.

The legislative history and administrative interpretation of section 11 of the Federal Coal Leasing Amendments Act of 1976 are particularly relevant in interpreting section 2(a)(2)(A) of the Mineral Leasing Act, because the language used in both sections is identical. The legislative history of section 11 states, in part, that "[t]he purpose . . . of this language is to assure that the restrictions . . . are not circumvented by the formation of holding companies, or other devices of corporate organization." H.R. Rep. No. 94–687, 94th Cong., 1st Sess. 25 (1975) It is apparent from the plain language of section 2(a)(2)(A) and the legislative history of section 11 that "control" is the key concept through which ownership of a Federal coal lease will be attributed to related corporate entities. The phrase "controlled by or under common control with such person, association, or corporation" modifies the words "subsidiary," "affiliate," and "persons." Therefore, when a chain of corporate

ownership is involved, the question is whether a given corporation is "controlled by or under common control with" a related corporation. If there is sufficient control of a corporation by another corporation, related corporations in the corporate chain will be charged with ownership of the Federal coal lease. This analysis is consistent with the Department of the Interior's established interpretation of section 11 of the Mineral Leasing Act. See 46 FR 61390, 61403 (1981). The question of whether a particular entity is "controlled by or under common control with" another entity for purposes of section 2(a)(2)(A) will have to be determined on a case-by-case basis at the time that qualifications are being determined for a Federal lease issuance on or after December 31, 1986.

Actual control of a corporation will often exist without ownership of a majority of the corporation's voting stock. Ownership of less than 50 percent may provide actual control where stock ownership or other instruments of ownership are widely dispersed. These determinations will necessarily have to be made on a case-by-case basis.

Generally, the application of section 2(a)(2)(A) to a Federal coal lease holding entity will not be affected by a corporate reorganization of the entity. This is true even if the reorganized entity is renamed. In addition, if a Federal coal lessee in violation is acquired by a corporation, resulting in a parent-subsidiary structure, the section 2(a)(2)(A) violation will automatically run to the parent corporation. This is because the section 2(a)(2)(A) leasing prohibition runs up and down a chain of corporate ownership. That is, a parent's violation is charged to a controlled subsidiary and a subsidiary's violation is charged to a controlling parent, as well as to any other subsidiary commonly controlled by that parent. These comments were rejected.

One comment agreed that the time of ownership or control of a Federal coal lease must be counted in a cumulative manner. The comment also agreed that "the regulations must provide that holding a mined-out lease would not subject the lease holder to disqualification for new leases." Another comment stated that, with respect to holding mined-out Federal coal leases, the regulation should be expanded to apply to all circumstances which may necessitate retention of the lease after all recoverable coal reserves have been mined out. The Department of the Interior believes that the use of the term "for such purposes as" encompasses this concern (see 43 CFR 3472.1-2(e)(5)). Therefore, although the Department of the Interior agrees with this comment, there is no need to amend the proposed 43 CFR 3472.1-2(e)(6) in this final rulemaking, except to redesignate the paragraph number.

One comment stated that the regulation regarding mined-out Federal coal leases was "too limiting in that it requires that the lease be mined out. A mine can be forced to close even though all recoverable reserves have not been mined. This section should be expanded to allow for the reclamation of a lease even if the lease has not been mined out." The comment provided no specific examples for such an occurrence. This comment was rejected because it would run afoul of the Mineral Leasing Act's requirement that the Secretary of the Interior must ensure that maximum economic recovery is achieved.

One comment stated that the "statutory language of section 2(a)(2)(A) states that the Secretary shall not issue a lease to any person or entity 'where any such entity holds a lease or leases issued by the United States to coal deposits.' Holding a lease is not the same as "any property interest in a lease." Another comment stated that the "guidelines referred mainly to a holder of 'record title' whereas the proposed regulations talk about 'any property interest'—a broader concept." The concept of "holding" a lease within the meaning of section 2(a)(2)(A) is limited to a working interest, versus other types of interests, as discussed in the responses to comments received, in the **SUPPLEMENTARY INFORMATION,** *Specific Comments,* number 4., on the issue of "control." "Holding" a lease is clearly broader than owning a record title interest, as shown by the language used in section 27(a) of the Mineral Leasing Act, 30 U.S.C. 184(a), where Congress directed that no entity shall "take, own, hold or control" leases in excess of a maximum acreage limit. Congress repeated this phrasing when it amended section 27(a) in section 11 of the Federal Coal Leasing Amendments Act. However, in section 2(a)(2)(A), Congress chose to focus on entities that "hold" a lease, their affiliates and those who "control" such entities rather than merely those who "own" a lease. The final rulemaking therefore revises this definition to include only "working interests" and also to include arrangements where an entity may not own the record title but yet "holds" the right to develop the coal.

6. *Oil and Gas Lease Qualifications and Assignments.* Several comments stated that it appeared that the Department of the Interior was not intending to enforce the provisions of section 2(a)(2)(A) on oil and gas leases. The comments stated that the Department intended to rely on an "honor" system whereby it was presumed that lease applicants would state their compliance with section 2(a)(2)(A) upon application for a lease. In lieu of the "honor" system, it was suggested that the Department of the Interior require applicants to certify their compliance with section 2(a)(2)(A) and that the lease include a stipulation or lease term providing for lease cancellation if the lessee is later found to have been in violation of section 2(a)(2)(A) of the amended Mineral Leasing Act when the lease was issued.

The Department of the Interior, in fact, has already begun active enforcement of the section 2(a)(2)(A) provisions in the oil and gas leasing program. This approach does not rely on an "honor" system but rather on actual lessee compliance with section 2(a)(2)(A). Key elements include:

(1) Weekly updates by Bureau of Land Management personnel of parties who are in potential violation of section 2(a)(2)(A) based on the status of coal actions.

(2) Modification of the oil and gas lease form 3100-11 to include a specific lease term providing for the signatory to certify actual compliance with section 2(a)(2)(A) prior to lease issuance. Parties who falsely certify are subject to the stated lease cancellation provisions and the criminal provisions of 18 U.S.C. 1001.

(3) Revisions of the current regulations at 43 CFR 3102 to include compliance with section 2(a)(2)(A) as a specific Leasing Qualification. Language will also be added to give emphasis to the fact that leases issued in violation of section 2(a)(2)(A) are subject to the cancellation provisions at 43 CFR 3108.3.

Several comments stated that the proposed amendments to 43 CFR 3102.5 implied that all oil and gas lease assignment actions as well as lease issuance are subject to the provisions of section 2(a)(2)(A). They correctly pointed out that the Department of the Interior has determined that section 30a of the Mineral Leasing Act does not grant to the Secretary any discretion to apply the section 2(a)(2)(A) sanction to oil and gas lease transfers. The Department of the Interior agrees that the original language could have been so misinterpreted and has revised 43 CFR 3102.5 to clarify this point in this final rulemaking.

7. *Apparent Conflicts Between Specific Provisions of Proposed 43 CFR 3472.1-2(e).* Several comments stated that proposed 43 CFR 3472.1-2(e)(7)(iii)

quired that each Federal coal lease be producing and was silent on allowing payment of advance royalty in lieu of continued operation or available suspension relief from the producing requirement. Proposed 43 CFR 3472.1-2(e)(7)(iv), which applied to all of 43 CFR 3472.1-2(e)(7), cross-referenced the proposed paragraph (e) (1), (4), or (6) relief-from-production obligations. Specifically, the advance royalty in lieu of continued operation and the relief-from-production-due-to-suspension language is contained at the cross-referenced 43 CFR 3472.1-2(e)(1)(i). This final rulemaking remains unchanged regarding that cross-reference, except that the section number has been redesignated. These comments were rejected.

These same comments, however, pointed out that there was no such cross-reference to the relief-from-production language at proposed 43 CFR 3472.1-2(e)(5). That was an inadvertent omission in the proposed rulemaking and has been corrected by redesignating this provision as part of § 3472.1-2(e)(6) in this final rulemaking.

Several comments also stated that proposed 43 CFR 3472.1-2(e)(3) "is broader than the other proposed rules. . . . It is recommended that this rule be limited to those seeking to acquire a new lease issuance and apply only to additional information regarding the section 3 [sic] compliance certification." As written, the proposed 43 CFR 3472.1-2(e)(3) was self-limited in this regard by inclusion of the words "further evidence of compliance with the qualifications of this subpart." The words "special leasing" have been inserted before "qualifications" in the final rulemaking for further clarification.

Two comments suggested that proposed 43 CFR 3400.0-5(vv) be revised by replacing the phrase "that is in no way affiliated with" to "that is not an affiliate of" in the definition of "Arm's-length transactions." This point has merit. However, it was pointed out in other comments that the Department of the Interior had defined the term "Affiliate" in terms of itself. Therefore, the definition for the purposes of section 2(a)(2)(A) of the Mineral Leasing Act for "affiliate" has been replaced with a definition for the purposes of section 2(a)(2)(A) of the Mineral Leasing Act of "entity," which will now be used in place of the phrase "entity, or any of its affiliates" throughout the final rulemaking, and the other definitions and regulatory provisions have been revised accordingly. These comments were accepted.

One comment suggested that the following language be inserted at 43 CFR 3472.1-2(e)(1)(i): "A lease shall not be considered to be held during any period when it is subject to a suspension under Part 3400 [sic] of this title." This addition is not necessary because under a section 39 or amended section 7(b) suspension, the section 2(a)(2)(A) production requirement is tolled for the duration of the suspension. This comment was rejected.

Three comments suggested that the following language be added after the words "purposes as reclamation" at 43 CFR 3472.1-2(e)(5): "or any activities associated with an ongoing mine . . . ." This was suggested because it "would allow the inclusion of circumstances such as access to another operating lease where there is no logical mining unit." The words at proposed 43 CFR 3472.1-2(e)(6) stating "for such purposes as" encompass this aspect for mined-out Federal coal leases. However, if the lease has not been mined out, is not producing coal in commercial quantities, and is being solely used for access to another Federal coal lease, the nonproducing lease would disqualify the lessee, and any of its affiliates, from being issued another Federal lease granted under the Mineral Leasing Act. These comments were rejected.

One comment stated that if "we read § 3472.1-2(e)(7) for any general proposition, it is for the principle that 'once qualified, always qualified' for purposes of section 3 [sic]. As we have argued in the past, we strongly believe that Congress envisioned a single qualification process for purposes of assuring compliance with section 3 [sic]. Once a lessee qualifies for issuance of a new lease (at the time of new lease issuance), there is no reason to require additional qualification in the future. To do so would work harsh, unintended and, in some cases, inconsistent results." As proposed, and as retained in this final rulemaking, 43 CFR 3472.1-2(e)(6) states that the lease does not prohibit the lessee from being issued Mineral Leasing Act mineral leases as long as it is producing or as long as the producing obligation is being satisfied by statutory relief. 43 CFR 3472.1-2(e)(6) does not state "once qualified, always qualified" and the statement regarding the intent that the "Congress envisioned a single qualification process for purposes of assuring compliance with section 3" is not supportable when the plain, express language of the Mineral Leasing Act states otherwise. The relevant part of section 2(a)(2)(A) states: "when such entity *is not*, except as provided for in section 7(b) of this Act, *producing* coal from the lease deposits in commercial quantities . . .," as opposed to referring to a completed event. It refers to an ongoing condition. Section 2(a)(2)(A)'s requirement that coal be produced in commercial quantities is a requirement for the duration of the subject lease. This comment was rejected.

One comment stated that "the existing 43 CFR 3453.3-2(a) (1985), which provides for notice to the applicant to permit the applicant to cure application deficiencies, should be amended to provide notice to both the assignor and the assignee, no matter which party is the applicant." While this comment has merit, this final rulemaking is not the appropriate vehicle with which to address this recommendation. The Department of the Interior is examining 43 CFR Part 3480 to determine whether any changes to the existing regulations are necessary. This comment will be considered during that examination.

One comment stated: "Under the language of proposed 43 CFR [sic] § 3472.1-2(e)(4)(i)(C), the applicant for the LMU or its affiliate would be disqualified under section 3 [sic]. The reason for disqualification will be lack of production before any production is required by section 3. It would appear that the wording should be altered to read: 'the authorized officer determines the LMU would be producing in commercial quantities on the date the first lease in the LMU is held for ten years as provided in paragraph (e)(1)(i) of this section or the effective date of the LMU, whichever is later.' As proposed, 43 CFR 3472.1-2(e)(4)(i)(C), applied solely to logical mining units that were being formed and which would contain a Federal coal lease that would *otherwise disqualify* the Federal coal lessee under section 2(a)(2)(A) because it has been held for 10 years and is not producing in commercial quantities. Therefore, the comment has misread the proposed rulemaking and the language has not been changed in this final rulemaking. This comment was rejected.

One comment stated that the "proposed rule is silent on coal lease assignments, but we believe the intent is to employ the self-certification process for determining compliance for coal lease assignments as well as MLA lease issuance." As proposed, 43 CFR 3472.1-2(e)(2) stated, in part: "seeking to obtain an interest in a lease . . . ." As used throughout 43 CFR Group 3400, the term "lease" means any Mineral Leasing Act Federal coal lease. An assignment is the transfer of an interest in the lease. Such transfers of Federal coal leases are prohibited to entities disqualified under section 2(a)(2)(A) by existing regulation. Therefore, the basic assumption in this

comment is correct. The intent is to also apply the self-certification process for determining compliance for Federal coal lease assignments as well as a Federal coal lease issuance.

One comment stated that should the proposed 43 CFR 3472-1-2(e)(4)(iii) "rule be retained, we believe that the word 'adverse' in 'adverse decision' must be explained. We suspect the word is intended to refer to a disapproval of the application; however, at least for an LMU application, disapprovals are not the only reason for appeal. The applicant may receive an approval and still take issue with and appeal other decisions associated with approval, such as the recoverable reserves estimate. . . . If the proposed rule is not deleted, it, at a minimum, should be worked so that only IBLA appeals of application disapprovals lift the section 3 [sic] immunity. The apparent intent of this provision—to prevent lessees from automatically filing IBLA appeals to preserve their immunity—is not applicable in the case of an IBLA appeal of an approved application, since the approval itself has already extended the immunity." The term "adverse" is clearly intended to be a disapproval of any of the 3 pending actions. If the logical mining unit is approved, then an adverse decision on the pending request for approval is not at issue. However, this comment confuses approval of a logical mining unit containing a Federal coal lease that would otherwise disqualify the lessee under section 2(a)(2)(A) with an extension of immunity from the section 2(a)(2)(A) lease-qualification provision. This is clearly a misunderstanding. Such an approved logical mining unit only "protects" such Federal coal leases contained in the approved logical mining unit if the logical mining unit recoverable coal reserves are being produced. If the logical mining unit is not producing, the lessee would be disqualified from lease issuance pursuant to section 2(a)(2)(A).

Editorial changes have been made as necessary.

The principal authors of this final rulemaking are Allen B. Agnew and Pamela J. Lewis, Division of Solid Mineral Operations, and Rob Cervantes, Division of Fluid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, and the Office of the Solicitor, Department of the Interior.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The economic impact of this rulemaking is not significant and its impact will fall equally on all affected entities, whether large or small.

This proposed rulemaking contains no information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects

43 CFR Part 3100

Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3400

Administrative practice and procedure, Coal, Government contracts, Intergovernmental relations, Mines, Public lands—mineral resources.

43 CFR Part 3470

Coal, Government contracts, Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3500

Government contracts, Mineral royalties, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 3100, Group 3100, Parts 3400 and 3470, Group 3400 and Part 3500, Group 3500, all of Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations, are amended as set forth below:

December 2, 1986.

James E. Cason,

Acting Assistant Secretary of the Interior.

PART 3100—[AMENDED]

1. The authority citation for Part 3100 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 760 et seq.), the Act of May 21, 1930 (30 U.S.C. 301-306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), the Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96-514), the Refuge Administration Act of 1966 (16 U.S.C. 688dd-ee), the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a) and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

§ 3102.5 [Amended]

2. Section 3102.5 is amended by removing from where it appears the phrase "and (d)" and replacing it with the figure "(d)" and by removing the period at the end of paragraph (d) and adding the phrase "; and (e) except for an assignment or transfer under Subpart 3106 of this title, in compliance with section 2(a)(2)(A) of the Act (compliance is determined for Federal coal leases in accordance with § 3472.1-2(e) of this title), in which case the signature on an application or lease constitutes evidence of compliance. A lease issued to any entity in violation of this paragraph (e) shall be subject to the cancellation provisions at § 3108.3 of this title. The term 'entity' is defined at § 3400.0-5(rr) of this title."

PART 3400—[AMENDED]

3. The authority citation for Part 3400 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521-531 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 et seq.) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

4. Section 3400.0-5 is amended by adding new paragraph (rr) to read:

§ 3400.0-5 Definitions

* * * * *

(rr) For the purposes of section 2(a)(2)(A) of the Act:

(1) "Arm's length transaction" means the transfer of an interest in a lease to an entity that is not controlled by or under common control with the transferor.

(2) "Bracket" means a 10-year period that begins on the date that coal is first produced on or after August 4, 1976, from a lease that has not been made subject to the diligence provisions of

Part 3480 of this title on the date of first production.

(3) "Controlled by or under common control with," based on the instruments of ownership of the voting securities of an entity, means:

(i) Ownership in excess of 50 percent constitutes control;

(ii) Ownership of 20 through 50 percent creates a presumption of control; and

(iii) Ownership of less than 20 percent creates a presumption of noncontrol.

(4) "Entity" means any person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation.

(5) "Holds and has held" means the cumulative amount of time that an entity holds any working interest in a lease on or after August 4, 1976. The "holds and has held" requirement of section 2(a)(2)(A) of the Act is lessee-specific for each lease. "Working interest" includes both record title interests and arrangements whereby an entity has the ability to determine when, and under what circumstances, the rights granted by the lease to develop coal will be exercised.

(6) "Producing" means actually severing coal, or operating an ongoing mining operation in accordance with standard industry operation practices. A lease is deemed to be producing, even though:

(i) Severance is temporarily suspended for reasons beyond the reasonable control of the operator/lessee, as that term is defined at § 3480.0-5(a)(2) of this title, including but not limited to factors such as: Dragline or other equipment moving, breakdown, or repair; overburden removal; sale of coal from stockpiles; vacations and holidays; orders of governmental authorities; and failure of customers to take coal; or

(ii) Severed coal is being processed, loaded, or transported from the point of severance to the point of sale.

PART 3470—[AMENDED]

5. The authority citation for Part 3470 continues to read:

Authority: 30 U.S.C. 181 et seq. and 30 U.S.C. 351-359.

6. Section 3472.1-2(e) is revised to read:

§ 3472.1-2 Special leasing qualifications.

* * * *

(e)(1)(i) On or after December 31, 1986, no lease shall be issued and no existing lease shall be transferred, to any entity, that holds and has held for 10 years any lease from which the entity is not producing the coal deposits in commercial quantities, except as authorized under the advance royalty or suspension provisions of Part 3480 of this title, or paragraphs (e)(4) or (5) of this section.

(ii) An entity seeking to obtain a working interest in a lease, or approval of a transfer under subpart 3453 of this title, shall qualify both on the date of determination of lessee qualifications and on the date the lease is issued or transfer approved.

(iii) Once a lease has been issued to a qualified entity or transfer approved for a lease under subpart 3453 of this title, disqualification at a later date shall not result in surrender of that lease, or recision of the approved transfer, except as provided in paragraph (e)(4) of this section.

(2)(i) Any entity seeking to obtain a lease or approval of a transfer of a lease pursuant to 43 CFR Group 3400 of this title shall certify, in writing, that the entity is in compliance with the Act and the requirements of this subpart. The entity's self-certification statement shall include:

(A) A statement that the entity is qualified to be issued a lease or to have a transfer approved in accordance with the presumption of control or the presumption of noncontrol requirements at § 3400.0-5(rr) of this title, and in accordance with the producing requirements at paragraph (e)(6) of this section;

(B) Justification rebutting the presumption of control requirements at § 3400.0-5(rr) of this title, if the entity's instruments of ownership of the voting securities of another entity or of its voting securities by another entity are 20 through 50 percent. The authorized officer, based on the written self-certification statement and other relevant information, shall determine whether the entity has rebutted the presumption of control.

(ii) If a lease is issued, or a transfer approved under subpart 3453 of this title, to an entity based upon an improper, written self-certification of compliance, the authorized officer shall administratively cancel the lease, or rescind the approved transfer, after complying with § 3452.2-2 of this title.

(3) The authorized officer may require an entity holding or seeking to hold an interest in a lease, to furnish, at any time, further evidence of compliance with the special leasing qualifications of this subpart.

(4)(i) An entity, seeking to qualify for lease issuance, or transfer approval under subpart 3453 of this title, shall not be disqualified under the provisions of this subpart if it has one of the following actions pending before the authorized officer for any lease that would otherwise disqualify it under this subpart:

(A) Request for lease relinquishment; or

(B) Application for arm's-length lease assignment; or

(C) Application for approval of a logical mining unit that the authorized officer determines would be producing on its effective date.

(ii) Once a lease has been issued, or transfer approved, to an entity that qualifies under paragraph (e)(4)(i) of this section, an adverse decision by the authorized officer on the pending action, or the withdrawal of the pending action by the applicant, shall result in termination of the lease or recision of the transfer approval. Such decision of the authorized officer shall be effective, regardless of appeal of that decision. The possibility of lease termination shall be included as a special stipulation in every lease issued to an entity that qualifies under paragraph (e)(4) of this section.

(iii) The entity shall not qualify for lease issuance or transfer under paragraph (e)(4)(i) of this section during the pendency of an appeal before the Office of Hearings and Appeals from an adverse decision by the authorized officer on any of the actions described in paragraph (e)(4)(i) of this section.

(iv)(A) Where an entity, qualified under this section, had an approved transfer of a lease under subpart 3453 of this title, the transferor retained a right-of-first-refusal, and the entity wishes to relinquish such lease if such lease would otherwise disqualify the entity under this subpart, the entity may file the relinquishment under subpart 3452 of this title. However, the entity shall:

(1) Submit sufficient documentation for the authorized officer to determine that, in fact, such a right-of-first-refusal exists and prevents approval or disapproval by the authorized officer of the pending relinquishment;

(2) Submit with the request for approval of the relinquishment a statement that action by the authorized officer on the pending relinquishment be conditioned on the execution, or lack thereof, of the assignment under the right-of-first-refusal, as well as on the approval or disapproval of the assignment, if executed, under subpart 3453 of this title;

(3) Submit the assignment signed by the entity as well as proof that it has been submitted to the transferor that retained the right-of-first-refusal (e.g., copy of certified mail delivery); and

(4) Submit the name(s) and address(es) of the transferor(s) that retained the right-of-first-refusal.

(B) If the authorized officer determines, based on the information supplied under paragraph (e)(4)(iv)(A) of this section, that the right-of-first-refusal prevents action on the pending relinquishment, the authorized officer will send, via certified mail, return receipt requested, a request for additional information to the transferor that retained the right-of-first-refusal. The request shall state that the transferor that retained the right-of-first-refusal shall comply with subpart 3453 of this title within 30 days of receipt. If the transferor that retained the right-of-first-refusal does not comply within the 30-day time frame, the authorized officer will:

(1) Disapprove the pending assignment and so notify the entity and the transferor that retained the right-of-first-refusal; and

(2) Process the request for relinquishment under subpart 3452 of this title.

(C) If the authorized officer determines, pursuant to the information submitted under paragraph (e)(4)(iv)(A) of this section, that the right-of-first-refusal does not prevent action on the request for relinquishment, the authorized officer will:

(1) Disapprove the pending assignment and so notify the entity and the transferor that retained the right-of-first-refusal; and

(2) Process the request for relinquishment under subpart 3452 of this title.

(5) Leases that have been mined out (i.e., all recoverable reserves have been exhausted), as determined by the authorized officer, may be held for such purposes as reclamation without disqualification of the entity, or any of its affiliates, under the provisions of this subpart.

(6)(i) The authorized officer shall determine the date of first production for the purposes of establishing the beginning of the bracket, if applicable.

(ii) An entity shall not be disqualified under the provisions of this subpart if each lease that the entity holds is:

(A) Producing and is within its bracket;

(B) Producing and has produced commercial quantities during the bracket.

(C) Producing and has achieved production in commercial quantities (an entity holding such a lease is disqualified under section 2(a)(2)(A) of the Act from the end of the bracket until production in commercial quantities is achieved), for leases which fail to produce commercial quantities within the bracket;

(D) Producing in compliance with the diligent development and continued operation provisions of Part 3480 of this title, for leases which began their first production of coal on or after August 4, 1976, after becoming subject to the diligence provisions of Part 3480 of this title;

(E) Contained in an approved logical mining unit which is producing coal in accordance with the logical mining unit stipulations of approval pursuant to § 3487.1 (e) and (f) of this title; or

(F) Relieved of a producing obligation pursuant to paragraphs (e) (1), (4), or (5) of this section.

* * * * *

PART 3500—[AMENDED]

7. The authority citation for Part 3500 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix); sec. 3 of the Act of September 1, 1949 (30 U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508(b)); the Act of June 8, 1926 (30 U.S.C. 291–293); the Act of March 3, 1933, as amended (47 Stat. 1487); sec. 10 of the Act of August 4, 1939 (43 U.S.C. 387); the Act of October 8, 1964 (16 U.S.C. 460n et seq.); the Act of November 8, 1968 (16 U.S.C. 460q et seq.); the Act of October 2, 1968 (16 U.S.C. 90c et seq.); the Act of October 27, 1972 (16 U.S.C. 460dd et seq.); the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm-2—460mm-4); the Independent Offices Appropriations Act (31 U.S.C. 9701).

6. Section 3502.1 is amended by adding a new paragraph (d) to read:

§ 3502.1 Who may hold leases and permits.

* * * * *

(d) Except for an assignment or sublease under § 3506 of this title, a lease for leasable minerals shall be issued only to an entity if it is in compliance with section 2(a)(2)(A) of the act (compliance is determined for Federal coal leases in accordance with § 3472.1–2(e) of this title). A lease issued to any entity in violation of this paragraph (d) shall be subject to the cancellation provisions at § 3509.4 of this title. The term 'entity' is defined at § 3400.0–5(rr) of this title."

[FR Doc. 86–27519 Filed 12–4–86; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 302

Civil Defense; State and Local Emergency Management Assistance Program (EMA)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule delegates to the FEMA Regional Directors authority to reallocate surplus EMA funds to States within their regions during the first 9 months of each fiscal year.

EFFECTIVE DATE: December 5, 1986.

FOR FURTHER INFORMATION CONTACT: John McKay, Office of Emergency Management Programs, Federal Emergency Management Agency, Washington, DC 20472 (202–646–4252).

SUPPLEMENTARY INFORMATION: The change in procedures will allow a FEMA Regional Director the authority for the first 9 months of each fiscal year to reallocate unused portions of a State's EMA allocation among the other States as, in his/her best judgment, will best assure the adequate development of the civil defense capability of the Nation. This delegation is additional to, and does not replace that of, the Associate Director for State and Local Programs and Support (44 CFR 2.61(j)(7)).

The Regional Directors need not apply the same formula for the reallocations as is done for the original allocations by the Director. Therefore, the paragraphs (l) and (m) in § 302.5 are to be revised to accommodate the redelegation from the Director to the Regional Directors to reallocate EMA funds under certain conditions.

Nonapplicability

As Federal funding to which these regulations will be applicable is less than $100,000,000 annually, the regulation is not considered to be a major regulation requiring a regulatory analysis under Executive Order 12291. The regulation also is applicable to States to which the funding is made available and, thus, is not subject to the requirements of the Regulatory Flexibility Act which is concerned with small entities. No regulatory flexibility analysis will be prepared. This amendment does not call for any collection of information requiring clearance under section 3504(h) of the Paperwork Reduction Act and, as the regulation is administrative in character, there is no requirement for environmental clearance.

#2591

DATES: Effective January 6, 1987. Written comments will be considered if received on or before February 5, 1987.

ADDRESS: Send comments to: Chief Counsel for Revenue Sharing; Office of Revenue Sharing, Treasury Department, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Richard S. Isen, Chief Counsel, Office of Chief Counsel for Revenue Sharing, Washington, DC 20226, Telephone: (202) 634-5182.

SUPPLEMENTARY INFORMATION:

Background

The Revenue Sharing Program was terminated by section 14001 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. 99-272). A number of regulation changes have already been made to implement section 14001 of COBRA and to provide for the scheduled closure of the Office of Revenue Sharing and the Revenue Sharing Program. One additional change should be made concerning the Revenue Sharing State Adjustment Reserves. The Director has set aside in the State and Local Fiscal Assistance Trust Fund 0.5 percent of the total allocation for all units of local government within each State for any entitlement period. These amounts are held in State Adjustment Reserves. The Reserves are to be used to ensure that there are sufficient funds available to make adjustments due after final allocations are made and for other temporary uses. Section 51.26(a) describes the State Adjustment Reserves and their purpose.

In view of the termination of the Revenue Sharing Program and the repeal of the Revenue Sharing Act by section 14001(a)(1) of COBRA, it is not necessary to continue the State Adjustment Reserves. Section 51.26(a) is amended by the addition of a new paragraph (3) to provide for distribution of the State Adjustment Reserves and establishment of the National Adjustment Reserve.

The regulations (31 CFR Part 51) currently cite the Revenue Sharing Act, 31 U.S.C. 6701 through 6724 as authority for their issuance. Thus, it is necessary to revise the authority section of the regulations which cites the Revenue Sharing Act as the basis for the regulation's issuance and insert in its stead section 14001 of the COBRA. By sections 14001(a) (2), (3), (5), and (6) of the COBRA, Congress mandated that the substantive requirements of the repealed Revenue Sharing Act shall continue during the wind-down period for the agency. The authority section of the regulation shall be revised so that references to the Revenue Sharing Act in the regulation shall continue in effect during the wind-down of the Program.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires that regulations with significant economic impact on a substantial number of "small entities" should undergo regulatory flexibility analysis. With respect to the Revenue Sharing Program, small entities are defined as recipient governments with populations below 50,000. The interim rule is not expected to have a significant economic impact on small governmental units. It is hereby certified that this interim rule does not have a significant economic impact on small governmental units.

Executive Order 12291—"Federal Regulation"

The interim rule does not constitute a "major rule" within the meaning of section 1(b) of Executive Order 12291, entitled "Federal Regulation." A regulatory analysis is not required.

Need for Immediate Guidance

This interim rule is needed to enable the Department to timely reduce the amounts held in reserve to a level actually required to pay adjustments for prior Revenue Sharing payments. Given the repeal of the Revenue Sharing Act, the State Adjustment Reserves are no longer necessary or appropriate to effectuate the wind-down of the Revenue Sharing Program. Accordingly, compliance with the notice of proposed rule-making provisions of 5 U.S.C. 553(b) or the effective date limitation in 5 U.S.C. 553(d) would be impractical and contrary to the public interest.

List of Subjects in 31 CFR Part 51

Accounting, Administrative practice and procedure, Civil rights, Handicapped, Aged, Indians, Revenue sharing, Reporting and recordkeeping requirements.

31 CFR Part 51, is, therefore, amended in the manner set forth below.

Dated: October 30, 1986.

Kent A. Peterson,

Acting Director, Office of Revenue Sharing.

PART 51—FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS

1. The authority citation for Part 51 is revised to read as follows:

Authority: Section 14001 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272); Treasury Department Order No. 224, dated January 28, 1973 (38 FR 3342) as amended by Treasury Department Order No. 103-1 dated March 18, 1982. References to the Revenue Sharing Act in the regulation shall be read as providing the standards for determining compliance with section 14001 of the COBRA.

2. Section 51.26(a) is amended by revising the heading and adding a new paragraph (a)(3) to read as follows:

§ 51.26 Reservation of funds; adjustment of entitlements and allocations.

* * * * *

(a) *Reservation for State adjustment reserves; National Adjustment Reserve.* * * *

(3) The Director shall establish a National Adjustment Reserve. The National Adjustment Reserve shall be funded with such amount in the State Adjustment Reserves as is determined by the Director to ensure that there will be sufficient funds available to cover adjustments due after a final allocation for an entitlement period. The amounts in the National Adjustment Reserve may be used for the same purposes as those in the State Adjustment Reserves and shall remain until the Director determines that the liabilities of the Trust Fund are discharged or sufficiently diminished to permit their final disposition.

[FR Doc. 87-101 Filed 1-5-87; 8:45 am]

BILLING CODE 4810-26-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3400 and 3470

[Circular No. 2591; AA-660-87-4121-02]

Coal Management Provisions and Limitations; Amendments To Incorporate Changes Required by Mineral Leasing Act of 1920; Corrections

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking; corrections.

SUMMARY: The Department of the Interior is correcting errors in the final rulemaking on regulatory changes required by section 2(a)(2)(A) of the Mineral Leasing Act, which appeared in the Federal Register on December 5, 1986 (51 FR 43910).

FOR FURTHER INFORMATION CONTACT: Allen B. Agnew at (202) 343-7722.

SUPPLEMENTARY INFORMATION: The Department of the Interior, Bureau of Land Management, promulgated regulations implementing section 2(a)(2)(A) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 201(a)(1)(A)), on December 5, 1986 (51

43910). These regulations contained rs which are discussed briefly below are corrected by this notice.

James E. Cason,

Acting Assistant Secretary of the Interior.

December 30, 1986.

The following corrections are made in 43 CFR Parts 3400 and 3470, Coal Management-General; Coal Management Provisions and Limitations, published in the Federal Register on December 5, 1986 (51 FR 43910).

1. In § 3400.0–5(rr)(5), page 43922, first column, in the sixth line of paragraph (5), change "lessee-specific" to "working interest holder-specific."

This change was discussed in the preamble to the final rulemaking at page 43919, second column, last full paragraph, but was inadvertently omitted from the final regulations.

2. In § 3400.0–5(rr)(6)(i), page 43922, first column, in the fifth line of paragraph (6)(i), change "§ 3480.0–5(a)(2)" to "§ 3480.0–5(a)."

The correct cross-reference is to § 3480.0–5(a)(27) at present, but because an amendment and possible renumbering of that provision are anticipated, a reference to § 3480.0–5(a) is sufficient.

3. In the eleventh line of the same agraph (6)(i), remove the phrase "and re of customers to take coal" and stitute the phrase "coal buyer's operations of its power plants that require the coal buyer to stop taking coal shipments for a limited duration of time."

The regulation was intended to be modeled as addressed in the preamble. The final regulation did not correctly state the concept described on page 43916, first column, last sentence of the paragraph ending in that column. To avoid confusion, the final rulemaking is corrected by using a statement from the preamble to replace the phrase "failure of customers to take coal."

4. In § 3470.1–2(e)(4)(iv)(A)(*3*), page 43922, third column, remove the word "the" from the first line of paragraph (*3*) and insert in its place the words "an application for arm's-length lease."

This change is made to clarify and emphasize that the paragraph refers to pending assignments between entities qualified to make assignments without violating the prohibitions in section 2(a)(2)(A).

5. In § 3470.1–2(e)(5), page 43923, first column, remove the commas and the words "or any of its affiliates" from s 6 and 7 of paragraph (5).

is change was discussed in the mble of the final rulemaking at page 43920, first column, last full paragraph, and inadvertently omitted in this provision of the final regulations.

[FR Doc. 86–132 Filed 1–5–87; 8:45 am]

BILLING CODE 4310–84–M

OFFICE OF PERSONNEL MANAGEMENT

45 CFR Part 801

Voting Rights Program, Arizona

AGENCY: Office of Personnel Management.

ACTION: Final rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is establishing two new offices for filing applications or complaints under the Voting Rights Act of 1965, as amended. The Attorney General has determined that these designations are necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution.

DATES: This rule is effective immediately upon publication. In view of the need for its publication without an opportunity for prior comment, comments will still be considered. To be timely, comments must be received on or before February 5, 1987.

ADDRESS: Send or deliver comments to Jeremiah J. Barrett, Coordinator, Voting Rights Program, Office of Personnel Management, Room 7H09, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jeremiah J. Barrett, (202) 632–5564.

SUPPLEMENTARY INFORMATION: The Attorney General has designated Navajo and Apache Counties, Arizona, as additional examination points under the provisions of the Voting Rights Act of 1965, as amended. He determined on October 31, 1986, that these designations are necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, OPM will appoint Federal examiners to review the qualifications of applicants to be registered to vote and Federal observers to observe local elections.

Under section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

Under section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately in view of the pending elections to be held in the subject counties, where Federal observers will observe elections under the authority of the Voting Rights Act of 1965, as amended.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it adds two new locations to the list of counties in the regulations concerning OPM's responsibilities under the Voting Rights Act.

List of Subjects in 45 CFR Part 801

Administrative practice and procedure, Voting rights.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending 45 CFR Part 801 as follows:

PART 801—VOTING RIGHTS PROGRAM

1. The authority citation for Part 801 is revised to read as follows:

Authority: 5 U.S.C. 1103; secs 7, 9, 79 Stat. 440, 411 (42 U.S.C. 1973e, 1973g).

2. Section 801.202, Appendix A, is amended by adding alphabetically the State of Arizona to read as follows:

§ 801.202 Times and places for filing and forms of application.

* * * * *

Appendix A

* * * * *

Arizona

County; Place for filing; Beginning date.

Apache—Window Rock Motor Inn, P.O. Box 1687, Window Rock, Arizona; October 31, 1986.

BUREAU OF LAND MANAGEMENT
CALIFORNIA STATE OFFICE
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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[AA-630-07-4111-02; Circular No. 2592]

Onshore Oil and Gas Operations; Amendment Revising the Regulations Implementing the Federal Oil and Gas Royalty Management Act and the Mineral Leasing Acts

PART 3160—[AMENDED]

1. The authority citation for part 3160 is revised to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for acquired Lands, as amended (30 U.S.C. 351-359), the Act of May 21, 1930, (30 U.S.C. 301-306), the Act of March 3,1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a-396q); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a-398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.); the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321 et seq.); the Act of December 12, 1980 (42 U.S.C. 6508); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102).

2. Note 1, *Operating Forms*, is amended as follows:

A. In the first column, the number "9-330" is removed and replaced with the number "3160-4", the number "9-329/329A" is removed and replaced with the number "3160-6" and the number "9-331C" is removed and replaced with the number "3160-3";

B. In the middle column, in the second paragraph, the word "production" is removed and replaced with the word "operation" and in the fourth paragraph the word "Due' is removed and replaced with the word "Filed"; and

C. In the third column, the number "1010-0004" is removed and replaced with the number "1004-0137", the number "1010-0005" is removed and replaced with the number "1004-0138" and the number is "1010-0003" is removed and replaced with the number "1004-0136".

3. Note 1, *Other Operating Requirements*, is amended by removing from where it appears the phrase "Clearance Number 1010-0001" and replacing it with the phrase "Clearance Number 1004-0134".

§ 3160.0-5 [Amended]

4. Section 3160.0-5 is amended by:

A. Amending the term "*avoidably lost*" by removing from where it appears the word "Supervisor" and replacing it with the phrase "authorized officer";

B. Amending the term "*notice to lessees and operators (NTL)*" by removing from where it appears the word "DMM" and replacing it with the phrase "authorized officer" and by removing from where it appears the phrase "Region or portion thereof" and replacing it with the phrase "State, District or Area";

C. Amending the term "*waste of oil or gas*" by removing it from where it appears the word "Supervisor" and replacing it with the phrase "authorized officer";

D. Adding the following terms to read:

"*Knowingly or willfully.* A violation is "knowingly or willfully" committed if it constitutes the voluntary or conscious performance of an act which is prohibited or the voluntary or conscious failure to perform an act or duty with is required. It does not include performances or failures to perform which are honest mistakes or which are merely inadvertent. It includes, but does not require, performances or failures to perform which result from a criminal or evil intent or from a specific intent to violate the law. The knowing or willful nature of conduct may be established by plain indifference to or reckless disregard of the requirements of law, regulations, orders, or terms of the lease. A consistent pattern of performance of failure to perform may also be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of honest mistake or mere inadvertency. Conduct which is otherwise regarded as being knowing or willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.";

"*Major violation.* Noncompliance which causes or threatens immediate, substantial and adverse impacts on public health and safety, the environment, production accountability, or royalty income.";

"*Minor violation.* Noncompliance which does not rise to the level of a "major violation.' ";

"*New or resumed production under section 102(b)(3) of the Federal Oil and Gas Royalty Management Act.* The date on which a well commences production, or resumes produciton after having been off production for more than 90 days, is to be construed as follows:

(a) For an oil well, the date on which liquid hydrocarbons are first sold or shipped from a temporary storage facility, such as a test tank, or the date on which liquid hydrocarbons are first produced into a permanent storage facility, whichever first occurs;

(b) For a gas well, the date on which gas is first measured through sales metering facilities or the date on which associated liquid hydrocarbons are first sold or shipped from a temporary storage facility, whichever first occurs. For purposes of this provision, a gas well shall not be considered to have been off of production unless it is incapable of production."; and

E. Amending the term "Onshore Oil and Gas Order" by removing from where it appears the word "implements" and replacing it with the phrase "implements and supplements".

5. Section 3161.1 is revised to read:

§ 3161.1 Jurisdiction.

(a) All operations conducted on a Federal or Indian oil and gas lease by, or on behalf of, the lessee are subject to the regulations in this part.

(b) Regulations in this part relating to site security, measurement, reporting of production and operations, and assessments or penalties for noncompliance with such requirements are applicable to all wells and facilities on State or privately-owned mineral lands committed to a unit or

Published in 52 F.R. 5384, February 20, 1987 - Effective April 21, 1987 and corrections from 52 F.R. 10225 and 52 F.R. 36576.

communitization agreement which affects Federal or Indian interests, notwithstanding any provision of a unit or communitization agreement to the contrary.

6. Section 3161.2 is amended by removing from where it appears the phrase "to assess monetary penalties or liquidated damages;" and replacing it with the phrase "to impose monetary assessments or penalties;", and by removing from where it appears the phrase "technical and procedural reviews" and replacing it with the phrase "administrative reviews".

§ 3161.3 [Amended]

7. Section 3161.3(b) is revised to read:

* * * * *

(b) in accomplishing the inspections, the authorized officer may utilize Bureau personnel, may enter into cooperative agreements with States or Indian Tribes, may delegate the inspection authority to any State, or may contract with any non-Federal Government entities. Any cooperative agreement, delegation or contractual arrangement shall not be effective without concurrence of the Secretary and shall include applicable provisions of the Federal Oil and Gas Royalty Management Act.

§ 3162.3 [Amended]

8. Section 3162.3(b) is amended by removing the last two sentences.

§ 3162.3-1 [Amended]

9. Section 3162.3-1(d) is amended by removing from where it appears the phrase "Form 9-331c" and replacing it with the phrase "Form 3160-3."

§ 3162.3-2 [Amended]

10. Section 3162.3-2 is amended by removing from where it appears in paragraphs (a) and (b) the phrase "Form 9-331" and replacing it with the phrase "Form 3160-5" and further amending paragraph (a) by removing the phrase "shut off conversion" and replacing it with the phrase "shut off, commingling production between intervals and/or conversion".

§ 3162.3-3 [Amended]

11. Section 3162.3-3 is amended by removing from where it appears the phrase "Form 9-331" and replacing it with the phrase "Form 3160-5".

§ 3162.4-1 [Amended]

12. Section 3162.4-1(b) is amended by removing from where it appears the phrase "Form 9-330" and replacing it with the phrase "Form 3160-4".

§ 3162.4-3 [Amended]

13. Section 3162.4-3 is amended by:

A. Amending the title by removing from where it appears the phrase "(Form 9-329 Public; Form 9-329A Indian)" and replacing it with the phrase "(Form 3160-6)"; and

B. Amending the initial paragraph of the section by removing from where it appears the phrase "Form 9-329" and replacing it with the phrase "Form 3160-6", by removing from where it appears the phrase "in duplicate" and by removing from where it appears the phrase "production month" and replacing it with the phrase "operation month".

14. Section 3162.6 is revised to read:

§ 3162.6 Well and facility identification.

(a) Every well within a Federal or Indian lease or supervised agreement shall have a well indentification sign. All signs shall be maintained in a legible condition.

(b) For wells located on Federal and Indian lands, lessees shall properly identify, by a sign in a conspicuous place, each well, other than those permanently abandoned. The well sign shall include the well number, the name of the operator, the lease serial number, the surveyed location (the quarter-quarter section, section, township and range or other authorized survey designation acceptable to the authorized officer; such as metes and bounds). When approved by the authorized officer, individual well signs may display only a unique well name and number. When specifically requested by the authorized officer, the sign shall include the unit or communitization name or number. The authorized officer may also require the sign to include the name of the Indian allottee lessor(s) preceding the lease serial number. In all cases, individual well signs in place on the effective date of this rulemaking which do not have the unit or communitization agreement number or do not have quarter-quarter identification will satisfy these requirements until such time as the sign is replaced. All new signs shall have identification as above, including quarter-quarter section.

(c) All facilities at which Federal or Indian oil is stored shall be clearly identified with a sign that contains the name of the operator, the lease serial number or communitization or unit agreement identification number, as appropriate, and in public land states, the quarter-quarter section, township, and range. On Indian leases, the sign also shall include the name of the appropriate Tribe and whether the lease is tribal or allotted. For situations of 1 tank battery servicing 1 well in the same location, the requirements of this paragraph and paragraph (b) of this section may be met by 1 sign as long as it includes the information required by both paragraphs. In addition, each storage tank shall be clearly identified by a unique number. All identification shall be maintained in legible condition and shall be clearly apparent to any person at or approaching the sales or transportation point. With regard to the quarter-quarter designation and the unique tank number, any such designation established by state law or regulation shall satisfy this requirement.

(d) All abandoned wells shall be marked with a permanent monument containing the information in paragraph (b) of this section. The requirement for a permanent monument may be waived in writing by the authorized officer.

§§ 3162.7-2 and 3162.7-3 [Amended]

15. Section 3162.7-2 is amended by removing from where it appears the phrase "measured by" and replacing it with the phrase "measured on the lease by", and by adding at the end of the section the sentence, "Off-lease storage or measurement, or commingling with production from other sources prior to measurement, may be approved by the authorized officer." and § 3162.7-3 is amended by adding at the end of the section the sentence, "Off-lease measurement or commingling with production from other sources prior to measurement may be approved by the authorized officer."

§ 3162.7-4 [Amended]

16. Section 3162.7-4 is amended by:

A. Amending paragraph (a) by removing in their entirety from where they appear the terms "closed system" and "open system" and the term "appropriate valves" is revised to read *"Appropriate valves.* Those valves in a particular piping system, i.e., fill lines, equalizer or overflow lines, sales lines, circulating lines, and drain lines that shall be sealed during a given operation.", and the term "effectively sealed" is revised to read *"Effectively sealed.* The placement of a seal in such a manner that the position of the sealed valve may not be altered without the seal being destroyed.", by amending the term "seal" by removing from where it appears the word "fitting" and replacing it with the word "valve", and by amending the term "production phase" by removing the period at the end thereof and adding the phrase "and includes all operations at the facility other than those defined by the sales

phase."; and

B. Revising paragraphs (b) through (d) to read:

* * * * *

(b) *Minimum Standards.* Each operator of a Federal or Indian lease shall comply with the following minimum standards to assist in providing accountability of oil or gas production:

(1) All lines entering or leaving oil storage tanks shall have valves capable of being effectively sealed during the production and sales operations unless otherwise modified by other subparagraphs of this paragraph, and any equipment needed for effective sealing, excluding the seals, shall be located at the site. For a minimum of 6 years the operator shall maintain a record of seal numbers used and shall document on which valves or connections they were used as well as when they were installed and removed. The site facility diagram(s) shall show which valves will be sealed in which position during both the production and sales phases of operation.

(2) Each Lease Automatic Custody Transfer (LACT) system shall employ meters that have non-resettable totalizers. There shall be no by-pass piping around the LACT. All components of the LACT that are used for volume or quality determinations of the oil shall be effectively sealed. For systems where production may only be removed through the LACT, no sales or equalizer valves need be sealed. However, any valves which may allow access for removal of oil before measurement through the LACT shall be effectively sealed.

(3) There shall be no by-pass piping around gas meters. Equipment which permits changing the orifice plate without bleeding the pressure off the gas meter run is not considered a by-pass.

(4) For oil measured and sold by hand gauging, all appropriate valves shall be sealed during the production or sales phase, as applicable.

(5) Circulating lines having valves which may allow access to remove oil from storage and sales facilities to any other source except through the treating equipment back to storage shall be effectively sealed as near the storage tank as possible.

(6) The operator, with reasonable frequency, shall inspect all leases to determine production volumes and that the minimum site security standards are being met. The operator shall retain records of such inspections and measurements for 6 years from generation. Such records and measurements shall be available to any authorized officer or authorized representative upon request.

(7) Any person removing oil from a facility by motor vehicle shall possess the identification documentation required by appicable NTL's or onshore Orders while the oil is removed and transported.

(8) Theft or mishandling of oil from a Federal or Indian lease shall be reported to the authorized officer as soon as discovered, but not later than the next business day. Said report shall include an estimate of the volume of oil involved. Operators also are expected to report such thefts promptly to local law enforcement agencies and internal company security.

(9) Any operator may request the authorized officer to approve a variance from any of the minimum standards prescribed by this section. The variance request shall be submitted in writing to the authorized officer who may consider such factors as regional oil field facility characteristics and fenced, guarded sites. The authorized officer may approve a variance if the proposed alternative will ensure measures equal to or in excess of the minimum standards provided in paragraph (b) of this section wil be put in place to detect or prevent internal and external theft, and will result in proper production accountability.

(c) *Site security plans.* (1) Site security plans, which include the operator's plan for complying with the minimum standards enumerated in paragraph (b) of this section for ensuring accountability of oil/condensate production are required for all facilities and such facilities shall be maintained in compliance with the plan. For new facilities, notice shall be given that it is subject to a specific existing plan, or a notice of a new plan shall be submitted, no later than 60 days after completion of construction or first production or following the inclusion of a well on committed non-Federal lands into a federally supervised unit or communitization agreement, whichever occurs first, and on that date the facilities shall be in compliance with the plan. At the operator's option, a single plan may include all of the operator's leases, unit and communitized areas, within a single BLM district, provided the plan clearly identifies each lease, unit, or communitized area included within the scope of the plan and the extent to which the plan is applicable to each lease, unit, or communitized area so identified.

(2) The operator shall retain the plan but shall notify the authorized officer of its completion and which leases, unit and communitized areas are involved. Such notification is due at the time the plan is completed as required by paragraph (c)(1) of this section. Such notification shall include the location and normal business hours of the office where the plan will be maintained. Upon request, all plans shall be made available to the authorized officer.

(3) The plan shall include the frequency and method of the operator's inspection and production volume recordation. The authorized officer may, upon examination, require adjustment of the method or frequency of inspection.

(d) *Site facility diagrams.* (1) Facility diagrams are required for all facilities which are used in storing oil/condensate produced from, or allocated to, Federal or Indian lands. Facility diagrams shall be filed within 60 days after new measurement facilities are installed or existing facilities are modified or following the inclusion of the facility into a federally supervised unit or communitization agreement.

(2) No format is prescribed for facility diagrams. They are to be prepared on 8½" × 11" paper, if possible, and be legible and comprehensible to a person with ordinary working knowledge of oil field operations and equipment. The diagram need not be drawn to scale.

(3) A site facility diagram shall accurately reflect the actual conditions at the site and shall, commencing with the header if applicable, clearly identify the vessels, piping, metering system, and pits, if any, which apply to the handling and disposal of oil, gas and water. The diagram shall indicate which valves shall be sealed and in what position during the production or sales phase. The diagram shall clearly identify the lease on which the facility is located and the site security plan to which it is subject, along with the location of the plan.

§ 3163.1 [Amended]

17. Section 3163.1 is revised to read:

§ 3163.1 Remedies for acts of noncompliance.

(a) Whenever a lessee fails or refuses to comply with the regulations in this part, the terms of any lease or Permit, or the requirements of any notice or order, the authorized officer shall notify the lessee in writing of the violation or default. Such notice shall also set forth a reasonable abatement period:

(1) If the violation or default is not corrected within the time allowed, the authorized officer may subject the lessee to an assessment of not more than $500 per day for each day nonabatement continues where the violation or default is deemed a major violation;

(2) Where noncompliance involves a

minor violation, the authorized officer may subject the lessee to an assessment of $250 for failure to abate the violation or correct the default within the time allowed;

(3) When necessary for compliance, or where operations have been commenced without approval, or where continued operations could result in immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income, the authorized officer may shut down operations. Immediate shut-in action may be taken where operations are initiated and conducted without prior approval, or where continued operations could result in immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income. Shut-in actions or other situations may be taken only after due notice, in writing, has been given;

(4) When necessary for compliance, the authorized officer may enter upon a lease and perform, or have performed, at the sole risk and expense of the lessee, operations that the lessee fails to perform when directed in writing by the authorized officer. Appropriate charges shall include the actual cost of performance, plus an additional 25 percent of such amount to compensate the United States for administrative costs. The lessee shall be provided with a reasonable period of time either to take corrective action or to show why the lease should not be entered;

(5) Continued noncompliance may subject the lessee to lease cancellation and forfeiture under the bond. The lessee shall be provided with a reasonable period of time either to take corrective action or to show why the lease should not be recommended for cancellation and forfeiture declared under the surety bond;

(6) Where actual loss or damage has occurred as a result of the lessee's noncompliance, the actual amount of such loss or damage shall be charged to the lessee.

(b) Certain instances of noncompliance are violations of such a serious nature as to warrant the imposition of immediate assessments upon discovery. Upon discovery the following violations shall result in immediate assessments, which may be retroactive, in the following specified amounts per violation:

(1) For failure to install blowout preventer or other equivalent well control equipment, as required by the approved drilling plan, $500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed $5,000;

(2) For drilling without approval or for causing surface disturbance on Federal or Indian surface preliminary to drilling without approval, $500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed $5,000;

(3) For failure to obtain approval of a plan for well abandonment prior to commencement of such operations, $500.

(c) Assessments under paragraph (a)(1) of this section shall not exceed $1,000 per day, per operator, per lease. Assessments under paragraph (a)(2) of this section shall not exceed a total of $500 per operator, per lease, per inspection.

(d) Continued noncompliance shall subject the lessee to penalties described in § 3163.2 of this title.

(e) On a case-by-case basis, the State Director may compromise or reduce assessments under this section. In compromising or reducing the amount of the assessment, the State Director shall state in the record the reasons for such determination.

§§ 3163.2 and 3163.3 [Removed]

18. Sections 3163.2 and 3163.3 are removed in their entirety.

19. Section 3163.4–1 is redesignated as § 3163.2 and is revised to read:

§ 3163.2 Civil penalties.

(a) Whenever a lessee fails or refuses to comply with any applicable requirements of the Federal Oil and Gas Royalty Management Act, any mineral leasing law, any regulation thereunder, or the terms of any issue or permit issued thereunder, the authorized officer shall notify the lessee in writing of the violation, unless the violation was discovered and reported to the authorized officer by the liable person or the notice was previously issued under § 3163.1 of this title. If the violation is not corrected within 20 days of such notice or report, or such longer time as the authorized officer may agree to in writing, the lessee shall be liable for a civil penalty of up to $500 per violation for each day such violation continues, dating from the date of such notice or report. Any amount imposed and paid as assessments under the provisions of § 3163.1(a)(1) of this title shall be deducted from penalties under this section.

(b) If the violation specified in paragraph (a) of this section is not corrected within 40 days of such notice or report, or a longer period as the authorized officer may agree to in writing, the lessee shall be liable for a civil penalty of up to $5,000 per violation for each day the violation continues, not to exceed a maximum of 60 days, dating from the date of such notice or report. Any amount imposed and paid as assessments under the provisions of § 3163.1(a)(1) of this title shall be deducted from penalties under this section.

(c) In the event the authorized officer agrees to an abatement period of more than 20 days, the date of notice shall be deemed to be 20 days prior to the end of such longer abatement period for the purpose of civil penalty calculation.

(d) Whenever a transporter fails to permit inspection for proper documentation by any authorized representative, as provided in § 3162.7–1(c) of this title, the transporter shall be liable for a civil penalty of up to $500 per day for the violation, not to exceed a maximum of 20 days, dating from the date of notice of the failure to permit inspection and continuing until the proper documentation is provided.

(e) Any person shall be liable for a civil penalty of up to $10,000 per violation for each day such violation continues, not to exceed a maximum of 20 days if he/she:

(1) Fails or refuses to permit lawful entry or inspection authorized by § 3162.1(b) of this title; or

(2) Knowingly or willfully fails to notify the authorized officer by letter or Sundry Notice, Form 3160–5 or orally to be followed by a letter or Sundry Notice, not later than the 5th business day after any well begins production on which royalty is due, or resumes production in the case of a well which has been off of production for more than 90 days, from a well located on a lease site, or allocated to a lease site, of the date on which such production began or resumed.

(f) Any person shall be liable for a civil penalty of up to $25,000 per violation for each day such violation continues, not to exceed a maximum of 20 days if he/she:

(1) Knowingly or willfully prepares, maintains or submits false, inaccurate or misleading reports, notices, affidavits, records, data or other written information required by this part; or

(2) Knowingly or willfully takes or removes, transports, uses or diverts any oil or gas from any Federal or Indian lease site without having valid legal authority to do so; or

(3) Purchases, accepts, sells, transports or conveys to another any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted from a Federal or Indian lease site.

(g) Determinations of Penalty Amounts for this section are as follows:

(1) For major violations, all initial proposed penalties shall be at the maximum rate provided in paragraphs (a), (b), and (d) through (f) of this section, i.e., in paragraph (a) of this section, the initial proposed penalty for a major violation shall be at the rate of $500 per day through the 40th day of a noncompliance beginning after service of notice, and in paragraph (b) of this section, $5,000 per day for each day the violation remains uncorrected after the date of notice or report of the violation. Such penalties shall not exceed a rate of $1,000 per day, per operator, per lease under paragraph (a) of this section or $10,000 per day, per operator, per lease under paragraph (b) of this section. For paragraphs (d) through (f) of this section, the rate shall be $500, $10,000, and $25,000, respectively.

(2) For minor violations, no penalty under paragraph (a) of this section shall be assessed unless:

(i) The lessee has been notified of the violation in writing and did not correct the violation within the time allowed; and

(ii) The lessee has been assessed $250 under § 3163.1 of this title and a second notice has been issued giving an abatement period of not less than 20 days; and

(iii) The noncompliance was not abated within the time allowed by the second notice. The initial proposed penalty for a minor violation under paragraph (a) of this section shall be at the rate of $50 per day beginning with the date of the second notice. Under paragraph (b) of this section, the penalty shall be at a daily rate of $500. Such penalties shall not exceed a rate of $100 per day, per operator, per lease under paragraph (a) of this section, of $1,000 per day, per operator, per lease under paragraph (b) of this section.

(h) On a case-by-case basis, the Secretary may compromise or reduce civil penalties under this section. In compromising or reducing the amount of a civil penalty, the Secretary shall state on the record the reasons for such determination.

(i) Civil penalties provided by this section shall be supplemental to, and not in derogation of, any other penalties or assessments for noncompliance in any other provision of law, except as provided in paragraphs (a) and (b) of this section.

(j) If the violation continues beyond the 60-day maximum specified in paragraph (b) of this section or beyond the 20 day maximum specific in paragraphs (e) and (f) of this section, lease cancellation proceedings shall be initiated under either Title 43 or Title 25 of the Code of Federal Regulations.

(k) If the violation continues beyond the 20-day maximum specified in paragraph (d) of this section, the authorized officer shall revoke the transporter's authority to remove crude oil or other liquid hydrocarbons from any Federal or Indian lease under the authority of that authorized officer or to remove any crude oil or liquid hydrocarbons allocation to such lease site. This revocation of the transporter's authority shall continue until compliance is achieved and related penalty paid.

20. Section 3163.4–2 is redesignated as § 3163.3.

21. A new § 3163.4 is added to read:

§ 3163.4 Failure to pay.

If any person fails to pay an assessment or a civil penalty under § 3163.1 or § 3163.2 of this title after the order making the assessment or penalty becomes a final order, and if such person does not file a petition for judicial review in accordance with this subpart, or, after a court in an action brought under this subpart has entered a final judgment in favor of the Secretary, the court shall have jurisdiction to award the amount assessed plus interest from the date of the expiration of the 90-day period provided by § 3165.3(d)(2) of this title. The Federal Oil and Gas Royalty Management Act requires that any judgment by the court shall include an order to pay.

§ 3163.5 [Amended]

22. Section 3163.5 is amended by removing from where it appears in paragraph (b) the citation "3163.4–1" and replacing it with the citation "3163.2" and by removing from where it appears in paragraph (c) the citation "3163.4–1(b)" and replacing it with the citation "3163.2".

23. Section 3165.3 is revised to read:

§ 3165.3 Notice State Director review and hearing on the record.

(a) *Notice.* Whenever a lessee fails to comply with any provisions of the lease, the regulations in this part, applicable orders or notices, or any other appropriate orders of the authorized officer, written notice shall be given the lessee to remedy any defaults or violations. Written orders or a notice of violation, assessment, or proposed plenalty shall be issued and served by personal service by an authorized officer or by certified mail. Service shall be deemed to occur when received or 7 business days after the date it is mailed, whichever is earlier. Any person may designate a representative to receive any notice of violation, assessment, or proposed penalty on his/her behalf. In the case of a major violation, the authorized officer shall make a good faith effort to contact such designated representative by telephone to be followed by a written notice. Receipt of notice shall be deemed to occur at the time of such verbal communication, and the time of notice and the name of the receiving party shall be confirmed in the file. If the good faith effort to contact the designated representative is unsuccessful, notice of the major violation may be given to any person authorized by the lessee to conduct or supervise operations subject to the regulations in this part. In the case of a minor violation, written notice shall be provided as described above. A copy of all orders, notices, or instructions served on any contractor or field employee shall also be mailed to the lessee or the lessee's designated representative as described above. Any notice involving a civil penalty shall be mailed to the lessee of record.

(b) *State Director review.* Any adversely affected party that contests a notice of violation or assessment or an instruction, order, or decision of the authorized officer issued under the regulations in this part, may request an administrative review, before the State Director, either with or without oral presentation. Such request, including all supporting documentation, shall be filed in writing with the appropriate State Director within 20 business days of the date such notice of violation or assessment or instruction, order, or decision was received or considered to have been received and shall be filed with the appropriate State Director. Upon request and showing of good cause, an extension for submitting supporting date may be granted by the State Director. Such review shall include all factors or circumstances relevant to the particular case. Any party who is adversely affected by the State Director's decision may appeal that decision to the Interior Board of Land Appeals as provided in § 3165.4 of this part.

(c) *Review of proposed penalties.* Any adversely affected party wishing to contest a notice of proposed penalty shall request an administrative review before the State Director under the procedures set out in paragraph (b) of this section. However, no civil penalty shall be assessed under this part until the party charged with the violation has been given the opportunity for a hearing on the record in accordance with section 109(e) of the Federal Oil and Gas Royalty Management Act. Therefore, any party adversely affected by the

State Director's decision on the proposed penalty, may request a hearing on the record before an Administrative Law Judge or, in lieu of a hearing, may appeal that decision directly to the Interior Board of Land Appeals as provided in § 3165.4(b)(2) of this part. If such party elects to request a hearing on the record, such request shall be filed in the office of the State Director having jurisdiction over the lands covered by the lease within 30 days of receipt of the State Director's decision on the notice of proposed penalty. Where a hearing on the record is requested, the State Director shall refer the complete case file to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge in accordance with part 4 of this title. A decision shall be issued following completion of the hearing and shall be served on the parties. Any party, including the United States, adversely affected by the decision of the Administrative Law Judge may appeal to the Interior Board of Land Appeals as provided in § 3163.4 of this title.

(d) *Action on request for State Director review. Action on request for administrative review.* The State Director shall issue a final decision within 10 business days of the receipt of a complete request for administrative review or, where oral presentation has been made, within 10 business days therefrom. Such decision shall represent the final Bureau decision from which further review may be obtained as provided in paragraph (c) of this section for proposed penalties, and in § 3165.4 of this title for all decisions.

(e) *Effect of request for State Director review or for hearing on the record.*

(1) Any request for review by the State Director under this section shall not result in a suspension of the requirement for compliance with the notice of violation or proposed penalty, or stop the daily accumulation of assessments or penalties, unless the State Director to whom the request is made so determines.

(2) Any request for a hearing on the record before an administrative law judge under this section shall not result in a suspension of the requirement for compliance with the decision, unless the administrative law judge so determines. Any request for hearing on the record shall stop the accumulation of additional daily penalties until such time as a final decision is rendered, except that within 10 days of receipt of a request for a hearing on the record, the State Director may, after review of such request, recommend that the Director reinstate the accumulation of daily civil penalties until the violation is abated. Within 45 days of the filing of the request for a hearing on the record, the Director may reinstate the accumulation of civil penalties if he/she determines that the public interest requires a reinstatement of the accumulation and that the violation is causing or threating immediate, substantial and adverse impacts on public health and safety, the environment, production accountability, or royalty income. If the Director does not reinstate the daily accumulation within 45 days of the filing of the request for a hearing on the record, the suspension shall continue.

24. Section 3165.4 is revised to read:

§ 3165.4 Appeals.

(a) *Appeal of decision of State Director.* Any party adversely affected by the decision of the State Director after State Director review, under § 3165.3(b) of this title, of a notice of violation or assessment or of an instruction, order, or decision may appeal that decision to the Interior Board of Land Appeals pursuant to the regulations set out in Part 4 of this title.

(b) *Appeal from decision on a proposed penalty after a hearing on the record.* (1) Any party adversely affected by the decision of an Administrative Law Judge on a proposed penalty after a hearing on the record under § 3165.3(c) of this title may appeal that decision to the Interior Board of Land Appeals pursuant to the regulations in Part 4 of this title.

(2) In lieu of a hearing on the record under § 3165.3(c) of this title, any party adversely affected by the decision of the State Director on a proposed penalty may waive the opportunity for such a hearing on the record by appealing directly to the Interior Board of Land Appeals under Part 4 of this title. However, if the right to a hearing on the record is waived, further appeal to the District Court under section 109(j) of the Federal Oil and Gas Royalty Management Act is precluded.

(c) *Effect of appeal on compliance requirements.* Except as provided in paragraph (d) of this section, an appeal shall not result in a suspension of the requirement for compliance with the order or decision from which the appeal is taken unless the Interior Board of Land Appeals determines that suspension of the requirements of the order or decision will not be detrimental to the interests of the lessor or upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage.

(d) *Effect of appeal on assessments and penalties.* (1) Except as provided in subparagraph (3) of this paragraph, an appeal filed pursuant to paragraph (a) of this section shall suspend the accumulation of additional daily assessments. However, the pendency of an appeal shall not bar the authorized officer from assessing civil penalties under § 3163.3 of this title in the event the lessee has failed to abate the violation which resulted in the assessment. The Board of Land Appeals may issue appropriate orders to coordinate the pending appeal and the pending civil penalty proceeding.

(2) Except as provided in subparagraph (3) of this paragraph, an appeal filed pursuant to paragraph (b) of this section shall suspend the accumulation of additional daily civil penalties.

(3) When an appeal is filed under paragraph (a) or (b) of this section, the State Director may, within 10 days of receipt of the notice of appeal, recommend that the Director reinstate the accumulation of assessments and daily civil penalties until such time as a final decision is rendered or until the violation is abated. The Director may, if he/she determines that the public interest requires it, reinstate such accumulation(s) upon a finding that the violation is causing or threatening immediate substantial and adverse impacts on public health and safety, the environment, production accountability, or royalty income. If the Director does not act on the recommendation to reinstate the accumulation(s) within 45 days of the filing of the notice of appeal, the suspension shall continue.

(e) *Judicial Review.* Any person who is aggrieved by a final order of the Secretary under this section may seek review of such order in the United States District Court for the judicial district in which the alleged violation occurred. Because section 109 of the Federal Oil and Gas Royalty Management Act provides for judicial review of civil penalty determinations only where a person has requested a hearing on the record, a waiver of such hearing precludes further review by the district court. Review by the district court shall be on the administrative record only and not de novo. Such an action shall be barred unless filed within 90 days after issuance of final decision as provided in § 4.21 of this title.

J. Steven Griles,
Assistant Secretary of the Interior.
January 13, 1987.

[FR Doc. 87-3571 Filed 2-19-87; 8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-630-07-4111-02]

43 CFR Part 3160

Onshore Oil and Gas Operations; Correction Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule; correction.

PART 3160—[AMENDED]

§ 3163.1 [Corrected]

1. On page 5393, first column, § 3163.1(a)(3), in the third sentence, remove from where it appears the phrase "Shut-in actions or other" and replace it with the phrase "Shut-in actions for other".

§ 3163.2 [Corrected]

2. On page 5393, third column, § 3163.2(a), in the first sentence, remove the phrase "terms of any issue or permit" and replace it with the phrase "terms of any lease or permit".

§ 3163.4 [Corrected]

3. On page 5394, third column, § 3163.4, in the first sentence, remove the phrase "the 90-day period provided by § 3165.3(d)(2)" and replacing it with the phrase "the 90-day period provided by § 3165.4(e)".

§ 3163.5 [Corrected]

4. On page 5393, third column, item 18, §§ 3163.2 and 3163.3 were removed in their entirety because their provisions were incorporated into § 3163.1 of the final rulemaking. On page 5394, third column, item 22, is corrected by removing the period at the end and adding "; the citation "3163.3" is removed from where it appears in paragraphs (a) and (c) of § 3163.5 and replaced in both places with the citation "3163.1"."

§ 3165.3 [Corrected]

6. On page 5394, third column, in the heading of § 3165.3, add a comma immediately after the word "Notice", in the second sentence of paragraph (a) of § 3165.3, remove the phrase "or proposed plenalty" and replace it with the phrase "or proposed penalty", and on page 5395, first column, in the third sentence of paragraph (b) of § 3165.3, remove the phrase "supporting date may be" and replace it with the phrase "supporting data may be".

§ 3165.4 [Corrected]

7. On page 5395, third column, § 3165.4(d), in the second sentence, remove the phrase "under § 3163.3 of this title" and replace it with the phrase "under § 3163.2 of this title".

March 25, 1987.

James E. Cason,

Acting Assistant Secretary of the Interior.

[FR Doc. 87-7005 Filed 3-30-87; 8:45 am]

43 CFR Part 3160

[AA-630-07-4111-02]

Onshore Oil and Gas Operations; Final Rulemaking Changing a Form Number

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

PART 3160—[AMENDED]

1. The authority citation for Part 3160 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a-396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a-398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the Act of December 12, 1980 (42 U.S.C. 6508), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 et seq.).

2. Note 1, *Operating Forms*, is amended as follows:

A. In the first column, the number "9-331" is removed and replaced with the number "3160-5"; and

B. In the third column, the number "1010-0002" is removed and replaced with the number "1004-0135".

J. Steven Griles,

Assistant Secretary of the Interior.

September 25, 1987.

[FR Doc. 87-22545 Filed 9-29-87; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2090

[Circular No. 2593; AA-320-87-4220]

Special Laws and Rules; Restatement of Procedures for the Segregation and Opening of Public Lands

PART 2090—[AMENDED]

1. An authority citation for Part 2090 is added to read:

Authority: R.S. 2478 (43 U.S.C. 1201); R.S. 2275, 2276 (43 U.S.C. 851, 852); 43 U.S.C. 869 et seq.; 43 U.S.C. 641 et seq.; 43 U.S.C. 321–323; 43 U.S.C. 231, 321, 323, 327–329; 25 U.S.C. 334; 25 U.S.C. 336; 16 U.S.C. 485; 72 Stat. 339–340; 43 U.S.C. 852 note; 16 U.S.C. 818; 43 U.S.C. 315f; 43 U.S.C. 1601 et seq.; 16 U.S.C. 3101 et seq.; 43 U.S.C. 1701 et seq.; 30 U.S.C. 189; 48 U.S.C. 462 note; 43 U.S.C. 279–283.

2. Part 2090 is amended by revising subpart 2091 to read:

PART 2090—SPECIAL LAWS AND RULES

Subpart 2091—Segregation and Opening of Lands

Sec.

2091.0–1 Purpose.
2091.0–3 Authority.
2091.0–5 Definitions.
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2091.1 Action on applications and mining claims.
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2091.2–1 Segregation.
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2091.5 Withdrawals.
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2091.5–6 Congressional withdrawals and opening of lands.
2091.6 Opening of withdrawn lands—general.
2091.7 Segregation and opening of lands for a specific use.
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2091.7–2 Segregative effect and opening—Taylor Grazing Act.
2091.9 Segregation and opening resulting from laws specific to Alaska.
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2091.9–2 Selections by the State of Alaska.
2091.9–3 Lands in Alaska under grazing lease.

Subpart 2091—Segregation and Opening of Lands

§ 2091.0–1 Purpose.

The purpose of this subpart is to provide a general restatement of the regulatory provisions in Title 43 of the Code of Federal Regulations dealing with the segregation and opening of public lands administered by the Secretary of the Interior through the Bureau of Land Management and summarize the existing procedures covering opening and closing of lands as they relate to the filing of applications. The provisions of this subpart do not replace or supersede any provisions of Title 43 covering opening and closing of public lands.

§ 2091.0–3 Authority.

Section 2478 of the Revised Statutes (43 U.S.C. 1201), sections 2275 and 2276 of the Revised Statutes (43 U.S.C. 851, 852), the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.), section 4 of the Act of August 18, 1894, as amended (43 U.S.C. 641 et seq.), the Act of March 3, 1877 (43 U.S.C. 321–323), as amended by the Act of March 3, 1891 (43 U.S.C. 231, 321, 323, 325, 327–329), section 4 of the General Allotment Act of February 8, 1887 (25 U.S.C. 334), as amended by the Act of February 28, 1891 (26 Stat. 794) and section 17 of the Act of June 25 1910 (25 U.S.C. 336), the Act of March 20, 1922, as amended (16 U.S.C. 485), the Act of July 7, 1958 (72 Stat. 339–340), the Act of January 21, 1929, as supplemented (43 U.S.C. 852 Note), section 24 of the Federal Power Act, as amended (16 U.S.C. 818), section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f), the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

§ 2091.0–5 Definitions.

As used in this subpart, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(b) "Segregation" means the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of some or all of the public land laws, including the mineral laws, pursuant to the exercise by the Secretary of regulatory authority for the orderly administration of the public lands.

(c) "Land" or "public lands" means any lands or interest in lands owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except: (1) Lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(d) "Mineral laws" means those laws applicable to the mineral resources administered by the Bureau of Land Management. They include, but are not limited to, the mining laws, the mineral leasing laws, the material disposal laws and the Geothermal Steam Act.

(e) "Public lands records" means the Tract Books, Master Title Plats and Historical Indices maintained by the Bureau of Land Management, or automated representation of these books, plats and indices on which are recorded information relating to the status and availability of the public lands. The recorded information may

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include, but is not limited to, withdrawals, restorations, reservations, openings, classifications applications, segregations, leases, permits and disposals.

(f) "Opening" means the restoration of a specified area of public lands to operation of the public land laws, including the mining laws, and, if appropriate, the mineral leasing laws, the material disposal laws and the Geothermal Steam Act, subject to valid existing rights and the terms and provisions of existing withdrawals, reservations, classifications, and management decisions. Depending on the language in the opening order, an opening may restore the lands to the operation of all or some of the public land laws.

(g) "Opening order" means an order issued by the Secretary or the authorized officer and published in the **Federal Register** that describes the lands, the extent to which they are restored to operation of the public land laws and the mineral laws, and the date and time they are available for application, selection, sale, location, entry, claim or settlement under those laws.

(h) "Public land laws" means that body of laws dealing with the administration, use and disposition of the public lands, but does not include the mineral laws.

(i) "Revocation" means the cancellation of a Public Land Order, but does not restore public lands to operation of the public land laws.

(j) "Secretary" means the Secretary of the Interior or a secretarial officer subordinate to the Secretary who has been appointed by the President with the advice and consent of the Senate, and to whom has been delegated the authority of the Secretary to perform the duties described in this part as being performed by the "Secretary".

§ 2091.07 Principles.

(a) Generally, segregated lands are not available for application, selection, sale, location, entry, claim or settlement under the public land laws, including the mining laws, but may be open to the operation of the discretionary mineral leasing laws, the material disposal laws and the Geothermal Steam Act, if so specified in the document that segregates the lands. The segregation is subject to valid existing rights and is, in most cases, for a limited period which is specified in regulations or in the document that segregates the lands. Where there is an administrative appeal or review action on an application pursuant to part 4 or other subparts of this title, the segregative period continues in effect until publication of an opening order.

(b) Opening orders may be issued at any time but are required when the opening date is not specified in the document creating the segregation, or when an action is taken to terminate the segregative effect and open the lands prior to the specified opening date.

§ 2091.1 Action on applications and mining claims.

(a) Except where the law and regulations provide otherwise, all applications shall be accepted for filing. However, applications which are accepted for filing shall be rejected and cannot be held pending possible future availability of the lands or interests in lands, except those that apply to selections made by the State of Alaska under section 906(e) of the Alaska National Interest Land Conservation Act and selections made by Alaska Native Corporations under section 3(e) of the Alaska Native Claims Settlement Act, when approval of the application is prevented by:

(1) A withdrawal, reservation, classification, or management decision applicable to the lands;

(2) An allowed entry or selection of lands;

(3) A lease which grants the lessee exclusive use of the lands;

(4) Classifications existing under appropriate law:

(5) Segregation due to an application previously filed under appropriate law and regulations;

(6) Segregation resulting from a notice of realty action previously published in the **Federal Register** under appropriate regulations; and

(7) The fact that, for any reason, the lands have not been made subject to, restored or opened to operation of the public land laws, including the mineral laws.

(b) Lands may not be appropriated under the mining laws prior to the date and time of restoration and opening. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, vests no rights against the United States. Actions required to establish a mining claim location and to initiate a right of possession are governed by State laws where those laws are not in conflict with Federal law. The Bureau of Land Management does not intervene in disputes between rival locators over possessory rights because Congress has provided for the resolution of these matters in local courts.

§ 2091.2 Segregation and opening resulting from publication of a Notice of Realty Action.

§ 2091.2-1 Segregation.

The publication of a Notice of Realty Action in the **Federal Register** segregates lands that are available for disposal under:

(a) The Recreation and Public Purposes Act, as amended (43 U.S.C. 869–4), for a period of 18 months (See Part 2740 and Subpart 2912);

(b) The sales provisions of section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) for a period of 270 days (See Part 2710); and

(c) The exchange provisions of section 206 of the Federal Land Policy and Management Act of 1976(43 U.S.C. 1716) for a period of 2 years (See Part 2200).

§ 2091.2-2 Opening.

(a) The segregative effect of a Notice of Realty Action automatically terminates either:

(1) At the end of the periods set out in § 2091.2-1 of this title (See Part 2740); or

(2) As of the date specified in an opening order published in the **Federal Register**; or

(3) Upon issuance of a patent or other document of conveyance; whichever occurs first.

(b) Lands conveyed under either the Recreation and Public Purposes Act or sections 203 and 206 of the Federal Land Policy and Management Act, upon opening, remain segregated from the mining laws pending the issuance of such regulations as the Secretary may prescribe.

(c) Lands conveyed to the United States by exchange become public lands upon acceptance of title by the United States and become open to the operation of some or all of the public land laws, to the extent and on the date and time set forth in an opening order published in the **Federal Register**.

§ 2091.3 Segregation and opening resulting from the filing of an application or offer.

§ 2091.3-1 Segregation.

(a) The filing of an application for lands for selection by a State (exclusive of Alaska) segregates the lands included in the application for a period of 2 years from the date the application is filed. (See Subparts 2621 and 2622)

(b) The filing of a notice of an offer for exchange of lands within the National Forest System segregates the lands for a period of 2 years from the date of such filing with the authorized office. (See § 2202.1(b))

(c) The filing of an application and publication of the notice of the filing of

an application in the **Federal Register** for the purchase of Federally-owned mineral interests under section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719) segregates the lands for a period of 2 years from the date of the publication of the notice of filing of the application with the authorized officer. (See Part 2720)

(d) The filing of an application for an airport lease under the Act of May 24, 1928, as amended (49 U.S.C. Appendix 211–213), or the filing of a request for an airport conveyance under the Airport and Airway Improvement Act of 1982 (49 U.S.C. 2215), segregates the lands as of the date of filing with the authorized officer. (See Part 2640 and Subpart 2911)

§ 2091.3–2 Opening.

(a) If the application or offer described in § 2091.3–1 of this title is not denied or otherwise terminated prior to the end of the 2-year segregative period, the segregative effect of the filing of the application or offer terminates either:

(1) Upon the issuance of a patent, other document of conveyance or lease to such lands; or

(2) Upon publication in the **Federal Register** of an opening order terminating the segregative effect and specifying the date and time of opening; or

(3) Automatically upon the expiration of the 2-year period commencing on the date the application or offer is filed; whichever occurs first.

(b) If the application or offer described in § 2091.3–1 of this title is denied or otherwise terminated prior to the end of the 2-year segregation period, the lands are opened by publication in the **Federal Register** of an opening order specifying the date and time of opening.

(c) Lands conveyed to the United States within the National Forest System under the authority of the Act of March 20, 1922, as amended (16 U.S.C. 485), or the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) are open to operation of all laws and regulations applicable to National Forest System lands on the date the lands are transferred to the National Forest System; and the public lands, as applicable, on the date of publication of a notice of availability.

§ 2091.4 Segregation and opening resulting from the allowance of entries, leases, grants or contracts.

§ 2091.4–1 Segregation and opening—Desert land entries and Indian allotments.

(a) Lands covered by an application for a desert land entry or Indian allotment become segregated on the date of allowance or approval of entry or allotment by the authorized officer. (See Parts 2520 and 2530).

(b) If an entry or allotment is cancelled or relinquished, the lands become open to the operation of the public land laws by publication in the **Federal Register** of an opening order which specifies the date and time of opening. (See Parts 2520 and 2530).

§ 2091.4–2 Segregation and opening—airport leases and grants.

(a) The issuance of a lease for airport purposes under the authority of the Act of May 24, 1928 or a patent or document of conveyance for airport and airway purposes under the authority of the Act of September 3, 1982, as amended (49 U.S.C. 2215), continues to segregate the lands. (See Part 2640 and Subpart 2911)

(b) If an airport lease is terminated, the lands are opened by publication in the **Federal Register** of an opening order which specifies the date and time of opening.

(c) The lands covered by an airport lease or grant remain open to the operation of the mineral leasing laws, the material disposal laws and the Geothermal Steam Act, but are segregated from the operation of the mining laws pending the issuance of such regulations as the Secretary may prescribe (See Part 2640 and Subpart 2911).

§ 2091.4–3 Segregation and opening—Carey Act.

(a) For lands covered by a Carey Act grant, publication of a notice in the **Federal Register** that a contract has been signed segregates the lands described in the contract, as of the date of publication of a 10 year period, from operation of the public land laws and the mineral laws as described in the notice. (See Part 2610).

(b) If the contract under the Carey Act is terminated, the lands are opened by publication in the **Federal Register** of an opening order which specifies the date and time of opening. Preference right of entry to Carey Act entrymen may be provided in accordance with the provisions of Subpart 2613 of this title.

§ 2091.5 Withdrawals.

§ 2091.5–1 Segregation of lands resulting from withdrawal applications filed on or after October 21, 1976.

(a) Publication in the **Federal Register** of a notice of an application or proposal for withdrawal, as provided in Subpart 2310 of this title, segregates the lands described in the withdrawal application or proposal to the extent specified in the notice. The segregative effect becomes effective on the date of publication and extends for a period of 2 years unless sooner terminated as set out below.

(b) Segregations resulting from applications and proposals filed on or after October 21, 1976, terminate:

(1) Automatically upon the expiration of a 2 year period from the date of publication in the **Federal Register** of the notice of the filing of an application or proposal for withdrawal;

(2) Upon the publication in the **Federal Register** of a Public Land Order effecting the withdrawal in whole or in part;

(3) Upon the publication in the **Federal Register** of a notice denying the withdrawal application or proposal, in whole or in part, giving the date and time the lands shall be open; or

(4) Publication in the **Federal Register** of a notice of request for cancellation of a withdrawal application or proposal, in whole or in part, giving the date and time the lands are open.

§ 2091.5–2 Segregation of lands resulting from withdrawal applications filed prior to October 21, 1976.

(a)(1) Lands covered by a withdrawal application or withdrawal proposal filed prior to October 21, 1976, were segregated on the date the application was properly filed and remain segregated through October 20, 1991, to the extent specified in notices published in the **Federal Register**, unless the segregative effect is terminated prior to that date in accordance with procedures in § 2091.5–1 of this title.

(2) Any amendment made to a withdrawal application filed prior to October 21, 1976, for the purpose of adding lands modifies the term of segregation for all lands covered by the amended application to conform with the provision of § 2091.5–1 of this title.

(b) Segregations resulting from applications filed under this section terminate in accordance with procedures in § 2091.5–1 of this title.

§ 2091.5–3 Segregative effect and opening—emergency withdrawals.

(a) When the Secretary determines that an emergency exists and extraordinary measures need to be taken to preserve values that would otherwise be lost, a withdrawal is made immediately in accordance with § 2310.5 of this title. Emergency withdrawals are effective on the date the Public Land Order making the withdrawal is signed, and cannot exceed 3 years in duration and may not be extended.

(b) The lands covered by an emergency withdrawal are opened automatically on the date of expiration of the withdrawal unless segregation is effected by the publication in the **Federal Register** of a notice of a withdrawal application or proposal.

§ 2091.5–4 Segregative effect and opening—water power withdrawals.

(a) Lands covered by powersite reserves, powersite classifications, and powersite designations are considered

withdrawn and are segregated from operation of the public land laws, but are not withdrawn and segregated from the operation of the mineral laws.

(b) These lands may be opened to operation of the public land laws after a revocation or cancellation order issued by the Department of the Interior or after a determination to open the lands is made by the Federal Energy Regulatory Commission under section 24 of the Federal Power Act. (See Subpart 2320) Mining claims may be located on such lands under procedures in Subpart 3730 of this title. These lands are opened by publication in the Federal Register of an opening order specifying the extent, date and time of opening.

§ 2091.5-5 Segregative effect and opening—Federal Power Act withdrawals.

(a)(1) The filing of an application for a power project with the Federal Energy Regulatory Commission withdraws the lands covered by the application from the operation of the public land laws; however, the lands remain open to the location, lease or disposal of the mineral estate.

(2) The issuance of a permit or license for a project by the Federal Energy Regulatory Commission withdraws the lands from the operation of the mining laws. (See Part 3730).

(b) Lands withdrawn under section 24 of the Federal Power Act remain withdrawn until the withdrawal is vacated and the lands opened by proper authority.

(c) After a withdrawal has been vacated, the lands are opened to the operation of the public land laws by notation of the lands records to that effect.

§ 2091.5-6 Congressional withdrawals and opening of lands.

(a) Congressional withdrawals become effective and are terminated as specified in the statute making the withdrawal. If the statute does not specify the date, duration and extent of segregation, the Secretary shall publish in the Federal Register a Public Land Order so specifying.

(b) If the statute does not specify when and to what extent the lands are to be opened, the Secretary publishes in the Federal Register an opening order so specifying.

§ 2091.6 Opening of withdrawn lands—general.

The term of a withdrawal ends upon expiration under its own terms, or upon revocation or termination by the Secretary by publication in the Federal Register of a Public Land Order. Lands included in a withdrawal that is revoked, terminates or expires do not automatically become open, but are opened through publication in the Federal Register of an opening order. An opening order may be incorporated in a Public Land Order that revokes or terminates a withdrawal or may be published in the Federal Register as a separate document. In each case, the opening order specifies the time, date and specific conditions under which the lands are opened. (See Subpart 2310.)

§ 2091.7 Segregation and opening of lands classified for a specific use.

§ 2091.7-1 Segregative effect and opening classifications.

(a)(1) Lands classified under the authority of the Recreation and the Public Purposes Act, as amended (43 U.S.C. 869-4), and the Small Tract Act (43 U.S.C. 682a) are segregated from the operation of the public land laws, including the mining laws, but not the mineral leasing laws, the material disposal laws, and the Geothermal Steam Act, except as provided in the notice of realty action.

(2) Lands classified under the authority of the Classification and Multiple Use Act (43 U.S.C. 1411-18) are segregated to the extent described in the notice of classification.

(b) The segregative effect of the classification described in § 2091.7-1 of this title terminates and the lands are opened under the following procedures:

(1) Recreation and Public Purposes Act classifications: (i) Made after the effective date of these regulations terminate and the lands automatically become open at the end of the 18-month period of segregation specified in part 2740 of this title, unless an application is filed; (ii) made prior to the effective date of these regulations where the 18-month period of segregation specified in part 2740 of this title is in effect on the effective date of these regulations, expire and the lands automatically become open at the end of the 18-month period of segregation unless an application is filed; (iii) made prior to the effective date on these regulations where the 18-month period of segregation has expired prior to the effective date of these regulations, terminate by publication in the Federal Register of an opening order specifying the date and time of opening.

(2) Small Tract Act classifications terminate by publication in the Federal Register of an opening order specifying the date and time of opening.

(3) Classification and Multiple Use Act classification shall be terminated by publication in the Federal Register of an opening order specifying the date and time of opening.

§ 2091.7-2 Segregative effect and opening—Taylor Grazing Act.

Lands classified under section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f), are segregated to the extent described in the classification notice. The segregative effect for Desert Land entries, Indian allotments, State selections (exclusive of Alaska) and Carey Act grants made after the effective date of these regulations remains in effect until terminated by publication in the Federal Register of an opening order specifying the date and time of opening or upon issuance of a patent or other document of conveyance.

§ 2091.9 Segregation and opening resulting from laws specific to Alaska.

§ 2091.9-1 Alaska Native selections.

The segregation and opening of lands authorized for selection and selected by Alaska Natives under the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.), are covered by Part 2650 of this title.

§ 2091.9-2 Selections by the State of Alaska.

The segregation and opening of lands authorized for selection and selected by the State of Alaska under the various statutes granting lands to the State of Alaska are covered by Subpart 2627 of this title.

§ 2091.9-3 Lands in Alaska under grazing lease.

The segregation and opening of lands covered by the Act of March 4, 1927 (43 U.S.C. 316, 316a-316o) are covered by Part 4200 of this title.

James E. Cason,

Acting Assistant Secretary of the Interior.

March 25, 1987.

[FR Doc. 87-8342 Filed 4-14-87; 8:45 am]

II 2593

§ 101-41.806-2 Information to be furnished by the disbursing office.

The disbursing office (D.O.) shall clearly imprint within the PAID BY block the word "Paid"; the month, day, and year of payment; and the D.O. (station) symbol number. The disbursing office shall also list in the appropriate column opposite each payee's name the serial numbers of any checks issued in payment of the voucher.

§ 101-41.806-3 Disposition of forms after payment.

The disbursing office shall forward the payment check to the carrier-payee with pertinent tear-off slips (or Notice to Check Recipient, TFS Form 3039 bearing all information shown on the tear-off slips), return two copies of the voucher-schedule to the issuing agency, and retain the original voucher-schedule to support its statements of accountability. If neither a tear-off slip nor a Notice to Check Recipient is provided, the carrier's bill number and related payment amount for transportation charges, and payment amount for interest, if any, for that bill number must appear on the check. In distributing the accomplished voucher-schedule, the issuing agency shall use one copy to support its statement of transactions (SF 224, SF 1220, or SF 1221) and retain a copy in its files.

12. Section 101-41.807-1 is revised to read as follows:

§ 101-41.807-1 Identification of basic transportation payment documents.

Each basic transportation voucher (SF 1113) and its related voucher-schedule (SF 1166 OCR) shall be cross-referenced by voucher number (military agencies) or schedule number (civilian agencies) in the appropriate space to provide positive association of one with the other and the date of payment as shown in the PAID BY block of the voucher-schedule.

13. Section 101-41.807-2 is amended by revising paragraphs (a) and (d) to read as follows:

§ 101-41.807-2 Submission of transportation vouchers.

* * * * *

(a) Each month, after the statement of transactions (SF 224, SF 1220, or SF 1221) has been accomplished, the basic transportation vouchers and supporting documents shall be securely bound with cord or tape and forwarded promptly to the General Services Administration (FWAA/C), Washington, DC 20405.

* * * * *

(d) The cover or container of each package shall include the following information.

From: Names and address of transmitting office. Period of account. Package number ——— of ———.

Disbursing office symbol number. Package number ——— of ———.

To: General Services Administration, (FWAA/C), Washington, DC 20405.

14. Section 101-41.808-1 is revised to read as follows:

§ 101-41.808-1 New or discontinued agency stations.

Agencies shall notify the General Services Administration (FWCA), Washington, DC 20405, whenever a new or existing agency station is authorized to prepare voucher-schedules for transportation services or when an agency station is no longer so authorized. This notice shall show the name and station location of the bureau or office and the date on which its authority to schedule payments for transportation services was granted or discontinued.

Dated: March 30, 1987.

T.C. Golden,

Administrator of General Services.

[FR Doc. 87-8351 Filed 4-14-87; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2090

[Circular No. 2593; AA-320-87-4220]

Special Laws and Rules; Restatement of Procedures for the Segregation and Opening of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking revises the regulations in subpart 2091 to place in one location the regulations that cover all forms of segregation of public lands, as well as the procedures under which those lands are opened to the operation of the public land laws and the mineral laws. This final rulemaking modernizes outdated provisions, making the subpart easier for the public to use in determining the status of public lands. The revision also makes it easier to improve the accuracy of the public land records.

EFFECTIVE DATE: May 15, 1987.

ADDRESS: Any inquiries or suggestions should be sent to: Director (320), Bureau of Land Management, Room 3643, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sue Bosma, (202) 343-6486.

SUPPLEMENTARY INFORMATION: A proposed rulemaking revising the regulations in 43 CFR Subpart 2091 was published in the Federal Register on June 7, 1985 (50 FR 24124), with a 60-day comment period. During the comment period, comments were received from 25 sources, 3 from associations, 3 from businesses, 2 from State and local governments, 1 from an Indian tribe, 1 from a legal service group and 15 from Federal agencies. The comments generally supported the rulemaking, but made suggestions on specific sections of the proposed rulemaking. Those suggestions are discussed in this preamble. Only those sections that were the subject of comments are discussed.

A few of the comments wanted to be certain that the regulations and the opening orders would give everyone an equal opportunity for access to the public lands covered by an opening order. The proposed and final rulemaking are designed to summarize in one location the procedures that deal with the opening and closing of the public lands to provide the public with as much information as possible about those procedures and the steps required to gain access to public lands that have been opened by an opening order. This summarization does not change the provisions of the existing provisions in other parts of Title 43 relating to opening and closing.

One comment expressed the view that the existing notation rule used by the Bureau of Land Management needed to be revised. The changes contained in the proposed rulemaking, and continued by the final rulemaking, are designed to limit the use of the notation rule as the official procedure for disclosing the availability of the public lands for public use. The new procedures will, to the extent possible, eliminate the notation rule and provide greater public notice, through publication of opening and closing orders, of the status of the public lands. Publication of opening and closing orders should provide greater accessibility to information about the public lands for the public.

A couple of comments questioned whether the proposed rulemaking would require the publication of an opening order in every instance where the public lands are opened to entry under the public land laws. The proposed rulemaking, as well as the final rulemaking, was designed to require the publication of an opening order when the lands are opened to the public land laws, except in those instances where a statute provides for automatic opening upon the occurrence of an event, such as

the termination of an emergency withdrawal.

One comment pointed out that the proposed rulemaking did not address withdrawals made for reservoirs under the Act of October 2, 1888 (43 U.S.C. 662) and the Act of June 25, 1910 (43 U.S.C. 141), and suggested that the final rulemaking needed to specifically address these withdrawals. The final rulemaking does not specifically address these withdrawals. The statutory authority for these withdrawals was repealed by the Federal Land Policy and Management Act and any action on the existing withdrawals would be taken under procedures for withdrawal action under the Federal Land Policy and Management Act.

A couple of comments pointed out that the definition of the term "opening order" sets out the requirement for publication of that document in the Federal Register and questioned the need to repeat the instructions for publication in each of the sections that discusses opening orders. The final rulemaking continues to repeat the publication requirement in each of the sections where an opening order is mentioned. After careful review of this issue, it was determined that repeating the instructions would make clear the steps that were to be taken for publication of an opening order.

One comment suggested that the final rulemaking should provide for the posting of opening orders to assist in informing the public, especially those who do not have access to the Federal Register, of the opening of the public lands. The final rulemaking has not adopted this suggestion because existing Bureau of Land Management operating procedures require the posting of a copy of the Federal Register notice in the public room of each State office.

One comment raised questions about the intended effect of the proposed rulemaking. The proposed and final rulemakings are designed to summarize in one location the regulations that cover all forms of segregation and opening of the public lands. The requirements that must be followed in making a withdrawal are covered in those parts of Title 43 where the procedures for making a specific withdrawal are set out. This final rulemaking makes no changes in the withdrawal or classification requirements.

One comment questioned the removal by the proposed rulemaking of §§ 2091.5 and 2091.6–3 from the existing regulations and suggested that these sections should be reinstated by the rulemaking. The final rulemaking has not adopted this suggestion and the sections have not been reinstated. These sections do not deal with the issue of segregation and opening of lands, but contain procedural instructions that are part of Bureau of Land Management's Manual system and will be followed in those instances when Indians are occupants of the public lands. This final rulemaking will have no effect on that existing procedure and the Bureau of Land Management will continue to follow the existing procedure that protects Indians who are occupants of the public lands. Finally, the final rulemaking will continue the procedure of segregating those public lands that are the subject of a properly filed application.

Comments on Specific Sections

Two comments pointed out that the authority section and authority citation provision did not contain a reference to the Alaska National Interest Lands Conservation Act. The final rulemaking corrects this oversight and includes a reference to that Act.

One comment suggested that the proposed rulemaking could be read to include lands of agencies other than the Bureau of Land Management. The proposed and final rulemakings deal with the opening and closing of those lands administered by the Secretary of the Interior through the Bureau of Land Management. Only those lands are covered by this final rulemaking even though the public land records of the Bureau show the status of the lands of other Federal agencies as required by statute. It should be noted that other agencies do not always keep the Bureau informed of changes in the status of lands under their jurisdiction, and this prevents the Bureau from maintaining current land records.

One comment was concerned that the proposed rulemaking did not continue segregation as a mechanism for protecting wildlife refuge lands from entry under the public land laws. These rulemakings are designed to deal only with lands under the jurisdiction of the Bureau of Land Management. Lands withdrawn or set aside for refuge purposes are protected under the regulations of the Fish and Wildlife Service.

The definition section of the proposed rulemaking was the subject of a number of comments. Several of the comments wanted new terms added to the section, while others requested that certain of the terms be amended. After careful review of the comments on this section, the final rulemaking adopts the language of the proposed rulemaking with an amendment in paragraph (b) that is a clarifying amendment.

A couple of comments raised questions about the availability of segregated lands for lease under the mineral leasing laws, with some reading the proposed rulemaking as closing all segregated lands to mineral leasing. Section 2091.0–7 makes this point clear in that it continues the policy of the Department of the Interior that lands are available for leasing under the mineral leasing laws, the Geothermal Steam Act and the material disposal laws unless the segregation provides otherwise. This final rulemaking continues unchanged the wording of the proposed rulemaking. This final rulemaking will continue the policy of the Secretary of the Interior of exercising his/her discretion under the mineral leasing laws, the Geothermal Steam Act and the material disposal laws unless the segregation specifies otherwise in order to provide special protection for the segregated lands.

The comments indicated some confusion about when lands are open to entry under the public land laws. One comment pointed out that there are situations where public lands are automatically opened without the issuance of an opening order and felt that the proposed rulemaking did not give proper recognition to this situation. The final rulemaking makes a change to § 2091.2–2(a)(2) of the proposed rulemaking to make it clear that lands are open as specified in the opening order. The proposed and final rulemakings contain provisions which allow automatic openings, as well as other actions that open lands.

A few comments on § 2091.1 of the proposed rulemaking raised the point that there are special statutory provisions concerning the filing of applications for lands in Alaska. In recognition of this situation, the final rulemaking has adopted language that clarifies this point.

One comment indicated that § 2091.1(b) of the proposed rulemaking was confusing and appeared to repeat the provisions of § 2091.0–7(a). The section has not been changed by the final rulemaking.

Several of the comments on § 2091.2 of the proposed rulemaking questioned the use of a notice of realty action as the method for classification of lands requiring classification actions. During its continuing efforts to update the provisions of Title 43 of the Code of Federal Regulations dealing with land disposals, the Bureau of Land Management is making the notice of realty action the vehicle for notification to the public that public lands are being made available for disposal. These changes, some of which are already in

place in Title 43, will standardize the use of the notice of realty action as the vehicle for land classification, a process that should clear up the confusion that was indicated in the comments on this issue.

One comment on § 2091.2–1 of the proposed rulemaking suggested that the final rulemaking provide that the filing of an application to exchange lands should segregate the public lands and pointed out that this amendment would follow the existing practice for exchanges of lands within the National Forest System. The final rulemaking has not adopted the suggestion. The exchange regulations, 43 CFR Group 2200, provide the authorized officer with latitude as to when the notice of realty action for an exchange should be issued in order to provide the greatest protection for the lands that are subject to the exchange. The Bureau of Land Management's experience shows that the finalization of an exchange normally takes longer than two years. However, the provisions of 43 CFR 2201.1(b) allow a 2-year period of segregation for exchanges and this final rulemaking cannot extend this period. Therefore, the 2-year period of segregation must be used at a point when it is most effective. If the segregation is imposed with the filing of the exchange proposal, the segregative effect would end before the exchange could be completed. This could result in entries on the lands that are the subject of the exchange that could jeopardize the exchange at a point where the parties had expended large amounts of time and money. For these reasons, the timing of the publication of the notice of realty action is left to field personnel who are responsible for completing the exchange.

Section 2091.2–2 of the proposed rulemaking was the subject of several comments, most of which raised points that they felt needed to be clarified. As a result of the concerns about clarity raised by the comments, the section was carefully reviewed to see if it could be clarified. The final rulemaking modifies the language of § 2091.2–2(a) of the proposed rulemaking to clarify an ambiguity about whether the lands are automatically opened when patented. Such action does terminate the segregative effect and the final rulemaking so states. The final rulemaking has adopted a suggested change to paragraph (a)(2) that makes it clear that the opening occurs on the date specified in the **Federal Register** notice, not upon publication in the **Federal Register**. Another suggested change that has been adopted by the final rulemaking is the inclusion of a reference to section 206 of the Federal Land Policy and Management Act. Finally, § 2091.2–2(c) of the proposed rulemaking has been amended by the final rulemaking to clarify that lands received by the United States as part of an exchange become open to "some or all of the public land laws," rather than open to all of the public land laws as stated in the proposed rulemaking.

Several comments were directed to § 2091.3 of the proposed rulemaking. One of the comments suggested that the final rulemaking should contain language covering land selections by the State of Alaska. This suggestion has not been adopted because the land selections of the State of Alaska are covered in § 2091.9 of the proposed and final rulemaking. These selections have been covered in a separate section because of the special nature of the land selection procedures for the State of Alaska, a procedure that did not fit with the provisions in the general sections.

A couple of the comments on § 2091.3–1(c) of the proposed rulemaking suggested the need to clarify the issue of when the segregation for an application to purchase Federally-owned mineral interests of the United States becomes effective. The final rulemaking has adopted a change which follows the provisions of 43 CFR Part 2720 and makes the segregation effective upon publication of the notice of the filing of an application to purchase Federally-owned mineral interests. This notice is to be published as soon as possible after the filing of the application in order to protect the lands from any unauthorized entry.

As suggested in a comment, the final rulemaking has adopted a change which adds the requirements of the Airport and Airway Improvement Act of 1982 to § 91.3–1(d) of the proposed rulemaking.

A couple of comments on § 2091.3–2 of the proposed rulemaking made the point that lands acquired through exchange should not be automatically opened to the public land laws. To clarify this point, the final rulemaking has adopted a change that specifies that the date on which lands acquired through exchange are open to the public land laws is the date of the publication of a notice of availability.

One comment questioned the inclusion of lands of the National Forest System in this proposed rulemaking which covers lands administered by the Secretary of the Interior through the Bureau of Land Management. These lands are included in both the proposed and final rulemaking because of the statutory authority given the Secretary of the Interior in connection with actions on National Forest exchanges.

One comment on § 2091.4 of the proposed rulemaking suggested that the phrase "leases, grants or contracts" be deleted. The final rulemaking has not adopted this suggestion, leaving the section as it appeared in the proposed rulemaking.

A comment on § 2091.4–1 of the proposed rulemaking expressed the view that there was a conflict between the language of the proposed rulemaking and § 2531.3 of the existing regulations. After a careful review of both sections, the final rulemaking retains § 2091.4–1 without change because there is no conflict between the two cited sections.

A comment on § 2091.4–3 of the proposed rulemaking wanted to know the effect of the segregation granted upon the signing of a Carey Act contract on the segregation that took effect upon filing of the application. The segregation created by the signing of a Carey Act contract is a new segregation that supersedes the prior segregation and is good for a period of 10 years, with the Secretary of the Interior having authority to extend that segregation for another 5 years. The final rulemaking makes no substantive change in this section of the proposed rulemaking.

The comments on §§ 2091.5, 2091.5–1 and 2091.5–2 of the proposed rulemaking pointed out several places where the proposed rulemaking was in error and needed clarification. The final rulemaking has adopted the suggestion that the word "withdrawals" be replaced with the word "segregations" because the latter word properly describes the action that occurs as a result of the filing of an application or proposal. Other comments on these sections of the proposed rulemaking make the point that the proposed rulemaking discusses "publication" without specifying where the publication is to be made. The final rulemaking adopts language requiring the publication to be in the **Federal Register**.

Nearly all of the comments on this section noted that the word "before" is used in error in § 2091.5–1(b) and that it should be replaced with the word "after." The final rulemaking has adopted this correction.

A couple of the comments on § 2091.5–2 of the proposed rulemaking indicated some confusion about segregations resulting from withdrawal applications filed prior to October 21, 1976. The final rulemaking makes no substantive changes in this section of the proposed rulemaking. The final rulemaking requires that any amended

drawal application filed prior to ober 21, 1976, will subject the lands covered by the amended application to the requirements for a withdrawal application filed on or after October 21, 1976. One comment questioned what was meant by paragraph (b) of this section of the proposed rulemaking. That paragraph provides that lands affected by a subsequent amendment to a withdrawal application that had been filed prior to October 21, 1976, are subject to the same requirements as those for a withdrawal application filed on or after October 21, 1976. This means the segregation of all the lands covered by the amended application will terminate two years from the date of publication of the amendment. The final rulemaking makes no substantive change in this section.

Several comments were received on § 2091.5–3 of the proposed rulemaking. The comments raised the point that the language of the proposed rulemaking concerning the automatic termination of the emergency withdrawal was confusing and needed clarification. The final rulemaking has amended paragraph (b) to clarify that the segregative effect of an emergency withdrawal terminates unless it is tinued by publication in the Federal ister of a notice of the filing of a thdrawal application or proposal covering all or part of the lands that were included in the emergency withdrawal.

Section 2091.5–4 of the proposed rulemaking was the subject of five comments. These comments raised questions about the procedures under which waterpower withdrawals can be terminated. After careful review of the proposed rulemaking and the comments, this section has been amended by the final rulemaking to clarify the procedures for opening lands covered by a waterpower withdrawal to the operation of the public land laws, including the mineral laws.

Section 2091.5–5 of the proposed rulemaking was the subject of six comments, with most of the comments raising questions about when lands covered by a Federal Power Act withdrawal that is vacated are opened. This section has been amended by the final rulemaking to clarify when such lands are opened, with the lands being opened when the vacated withdrawal is noted on the land records. The public is reminded that the Federal Power Act provides that lands covered by a eral Power Act withdrawal are, at time the withdrawal is vacated, subject for a period of 90 days to the right of the State where the lands are located to select a right-of-way for highway purposes. The final rulemaking also contains a reference to 43 CFR Part 3730 to give the interested public a better understanding of the effect of a Federal Power Act withdrawal.

Three comments were directed to § 2091.5–6 of the proposed rulemaking, with the comments expressing some confusion about the authority of the Secretary of the Interior in those instances where the Congress makes a withdrawal of the public lands and fails to specify the extent of the segregation. The final rulemaking has been amended to clarify the authority of the Secretary in such instances.

Only three comments were received on § 2091.6 of the proposed rulemaking. The comments were widely varied and raised questions about the effective date of a withdrawal and its termination. In order to assist the users of this section, the final rulemaking has added a reference to 43 CFR Part 2310—Withdrawals, General Procedure.

Section 2091.7–1 of the proposed rulemaking was the subject of eleven comments. A couple of the comments expressed the view that the section was too restrictive and should be simplified. After careful review, the title of the section has been changed by the final rulemaking to clarify that the section is applicable to all classification actions. The final rulemaking also replaces the word "cancellation" in § 2091.7–1(a)(2) with the word "classification," the word that was originally intended.

The comments on section 2091.7–2 of the proposed rulemaking raised questions about the provisions of this section. One comment pointed out that lands classified for disposal under the Recreation and Public Purposes Act and the Small Tract Act are segregated from the Mineral Leasing Act, which is inconsistent with the language of the proposed rulemaking. The final rulemaking has removed the reference to the mineral laws in the first sentence of the section. This change means that the classification notice will set out the extent of the segregative effect, including whether the lands are segregated from the mineral laws.

Sections 2091.9 through 2091.9–3 of the proposed rulemaking was the focus of three comments. One of the comments recommended that the final rulemaking repeat the provisions of 43 CFR Part 2650 that are applicable to opening and closing of the public lands. As stated earlier in this preamble, this part is a restatement of the provisions located in other parts of Title 43 of the Code of Federal Regulations on opening and closing of the public lands. Repeating these provisions is not required and the final rulemaking has not adopted the recommendation. The final rulemaking does make a correction in § 2091.9–3 by removing the phrase "Part 4220" and replacing it with the phase "Part 4200." While this final rulemaking cannot address the suggestion of one of the comments that the provisions of 43 CFR Part 2650 need to be updated, the Bureau of Land Management is reviewing Part 2650 to determine what, if any, changes are needed.

Editorial and grammatical corrections have been made as needed.

The principal author of this final rulemaking is Jim Powell, Division of Lands, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The revision made by this final rulemaking is a restatement in one location of the existing procedures for segregating or opening the public lands to the various public land laws and the mineral laws. The final rulemaking makes no change in the procedures that exist in other parts of Title 43 of the Code of Federal Regulations, procedures that apply equally to all entities who desire to use the public lands.

Since this final rulemaking is a restatement of regulations that are located in other parts of Title 43 of the Code of Federal Regulations, there are no new information collection requirements requiring the approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects 43 CFR Part 2090

Airports, Alaska, Coal, Grazing lands, Indian lands, Public lands, Public lands—classification, Public lands—mineral resources, Public lands—withdrawal, Seashores, Veterans.

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 1202), sections 2275 and 2276 of the Revised Statutes (43 U.S.C. 851, 852), the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.), section 4 of the Act of August 18, 1894, as amended (43 U.S.C. 641 et seq.), the Act of March 3, 1877 (43 U.S.C. 231, 321, 3233, 325, 327–329), section 4 of the General Allotment Act of February 8, 1887 (25 U.S.C. 334), as amended by the

Act of February 18, 1891 (26 Stat. 794) and section 17 of the Act of June 25, 1910 (25 U.S.C. 336), the Act of March 20, 1922, as amended (16 U.S.C. 485), the Act of July 7, 1958 (72 Stat. 339–340), the Act of January 29, 1929, as supplemented (43 U.S.C. 852 Note), section 24 of the Federal Power Act, as amended (16 U.S.C. 818), section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f), the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1701 et seq.), Part 2090, Group 2000, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

James E. Cason,

Acting Assistant Secretary of the Interior.

March 25, 1987.

PART 2090—[AMENDED]

1. An authority citation for Part 2090 is added to read:

Authority: R.S. 2478 (43 U.S.C. 1201); R.S. 2275, 2276 (43 U.S.C. 851, 852); 43 U.S.C. 869 et seq.; 43 U.S.C. 641 et seq.; 43 U.S.C. 321–323; 43 U.S.C. 231, 321, 323, 327–329; 25 U.S.C. 334; 25 U.S.C. 338; 16 U.S.C. 485; 72 Stat. 339–340; 43 U.S.C. 852 note; 16 U.S.C. 818; 43 U.S.C. 315f; 43 U.S.C. 1601 et seq.; 16 U.S.C. 3101 et seq.; 43 U.S.C. 1701 et seq.; 30 U.S.C. 189; 48 U.S.C. 462 note; 43 U.S.C. 279–283.

2. Part 2090 is amended by revising subpart 2091 to read:

PART 2090—SPECIAL LAWS AND RULES

Subpart 2091—Segregation and Opening of Lands

Sec.
2091.0–1 Purpose.
2091.0–3 Authority.
2091.0–5 Definitions.
2091.0–7 Principles.
2091.1 Action on applications and mining claims.
2091.2 Segregation and opening resulting from publication of a Notice of Realty Action.
2091.2–1 Segregation.
2091.2–2 Opening.
2091.3 Segregation and Opening resulting from the filing of an application or offer.
2091.3–1 Segregation.
2091.3–2 Opening.
2091.4 Segregation and opening resulting from the allowance of entries, leases, grants or contracts.
2091.4–1 Segregation and opening—Desert land entries and Indian allotments.
2091.4–2 Segregation and opening—airport leases and grants.
2091.4–3 Segregation and opening—Carey Act.
2091.5 Withdrawals.
Sec.
2091.5–1 Segregation of lands resulting from withdrawal applications filed on or after October 21, 1976.
2091.5–2 Segregation of lands resulting from withdrawal applications filed prior to October 21, 1976.
2091.5–3 Segregative effect and opening—emergency withdrawals.
2091.5–4 Segregative effect and opening—water power withdrawals.
2091.5–5 Segregative effect and opening—Federal Power Act withdrawals.
2091.5–6 Congressional withdrawals and opening of lands.
2091.6 Opening of withdrawn lands—general.
2091.7 Segregation and opening of lands for a specific use.
2091.7–1 Segregative effect and opening—classification.
2091.7–2 Segregative effect and opening—Taylor Grazing Act.
2091.9 Segregation and opening resulting from laws specific to Alaska.
2091.9–1 Alaska Native selections.
2091.9–2 Selections by the State of Alaska.
2091.9–3 Lands in Alaska under grazing lease.

Subpart 2091—Segregation and Opening of Lands

§ 2091.0–1 Purpose.

The purpose of this subpart is to provide a general restatement of the regulatory provisions in Title 43 of the Code of Federal Regulations dealing with the segregation and opening of public lands administered by the Secretary of the Interior through the Bureau of Land Management and summarize the existing procedures covering opening and closing of lands as they relate to the filing of applications. The provisions of this subpart do not replace or supersede any provisions of Title 43 covering opening and closing of public lands.

§ 2091.0–3 Authority.

Section 2478 of the Revised Statutes (43 U.S.C. 1201), sections 2275 and 2276 of the Revised Statutes (43 U.S.C. 851, 852), the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.), section 4 of the Act of August 18, 1894, as amended (43 U.S.C. 641 et seq.), the Act of March 3, 1877 (43 U.S.C. 321–323), as amended by the Act of March 3, 1891 (43 U.S.C. 231, 321, 323, 325, 327–329), section 4 of the General Allotment Act of February 8, 1887 (25 U.S.C. 334), as amended by the Act of February 28, 1891 (26 Stat. 794) and section 17 of the Act of June 25 1910 (25 U.S.C. 336), the Act of March 20, 1922, as amended (16 U.S.C. 485), the Act of July 7, 1958 (72 Stat. 339–340), the Act of January 21, 1929, as supplemented (43 U.S.C. 852 Note), section 24 of the Federal Power Act, as amended (16 U.S.C. 818), section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f), the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

§ 2091.0–5 Definitions.

As used in this subpart, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(b) "Segregation" means the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of some or all of the public land laws, including the mineral laws, pursuant to the exercise by the Secretary of regulatory authority for the orderly administration of the public lands.

(c) "Land" or "public lands" means any lands or interest in lands owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except: (1) Lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(d) "Mineral laws" means those laws applicable to the mineral resources administered by the Bureau of Land Management. They include, but are not limited to, the mining laws, the mineral leasing laws, the material disposal laws and the Geothermal Steam Act.

(e) "Public lands records" means the Tract Books, Master Title Plats and Historical Indices maintained by the Bureau of Land Management, or automated representation of these books, plats and indices on which are recorded information relating to the status and availability of the public lands. The recorded information may include, but is not limited to, withdrawals, restorations, reservations, openings, classifications applications, segregations, leases, permits and disposals.

(f) "Opening" means the restoration of a specified area of public lands to operation of the public land laws, including the mining laws, and, if appropriate, the mineral leasing laws, the material disposal laws and the Geothermal Steam Act, subject to valid existing rights and the terms and provisions of existing withdrawals, reservations, classifications, and management decisions. Depending on

the language in the opening order, an opening may restore the lands to the operation of all or some of the public land laws.

(g) "Opening order" means an order issued by the Secretary or the authorized officer and published in the Federal Register that describes the lands, the extent to which they are restored to operation of the public land laws and the mineral laws, and the date and time they are available for application, selection, sale, location, entry, claim or settlement under those laws.

(h) "Public land laws" means that body of laws dealing with the administration, use and disposition of the public lands, but does not include the mineral laws.

(i) "Revocation" means the cancellation of a Public Land Order, but does not restore public lands to operation of the public land laws.

(j) "Secretary" means the Secretary of the Interior or a secretarial officer subordinate to the Secretary who has been appointed by the President with the advice and consent of the Senate, and to whom has been delegated the authority of the Secretary to perform the duties described in this part as being performed by the "Secretary".

§ 2091.07 Principles.

(a) Generally, segregated lands are not available for application, selection, sale, location, entry, claim or settlement under the public land laws, including the mining laws, but may be open to the operation of the discretionary mineral leasing laws, the material disposal laws and the Geothermal Steam Act, if so specified in the document that segregates the lands. The segregation is subject to valid existing rights and is, in most cases, for a limited period which is specified in regulations or in the document that segregates the lands. Where there is an administrative appeal or review action on an application pursuant to part 4 or other subparts of this title, the segregative period continues in effect until publication of an opening order.

(b) Opening orders may be issued at any time but are required when the opening date is not specified in the document creating the segregation, or when an action is taken to terminate the segregative effect and open the lands prior to the specified opening date.

§ 2091.1 Action on applications and mining claims.

(a) Except where the law and regulations provide otherwise, all applications shall be accepted for filing. However, applications which are accepted for filing shall be rejected and cannot be held pending possible future availability of the lands or interests in lands, except those that apply to selections made by the State of Alaska under section 906(e) of the Alaska National Interest Land Conservation Act and selections made by Alaska Native Corporations under section 3(e) of the Alaska Native Claims Settlement Act, when approval of the application is prevented by:

(1) A withdrawal, reservation, classification, or management decision applicable to the lands;

(2) An allowed entry or selection of lands;

(3) A lease which grants the lessee exclusive use of the lands;

(4) Classifications existing under appropriate law;

(5) Segregation due to an application previously filed under appropriate law and regulations;

(6) Segregation resulting from a notice of realty action previously published in the Federal Register under appropriate regulations; and

(7) The fact that, for any reason, the lands have not been made subject to, restored or opened to operation of the public land laws, including the mineral laws.

(b) Lands may not be appropriated under the mining laws prior to the date and time of restoration and opening. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, vests no rights against the United States. Actions required to establish a mining claim location and to initiate a right of possession are governed by State laws where those laws are not in conflict with Federal law. The Bureau of Land Management does not intervene in disputes between rival locators over possessory rights because Congress has provided for the resolution of these matters in local courts.

§ 2091.2 Segregation and opening resulting from publication of a Notice of Realty Action.

§ 2091.2-1 Segregation.

The publication of a Notice of Realty Action in the Federal Register segregates lands that are available for disposal under:

(a) The Recreation and Public Purposes Act, as amended (43 U.S.C. 869-4), for a period of 18 months (See Part 2740 and Subpart 2912);

(b) The sales provisions of section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) for a period of 270 days (See Part 2710); and

(c) The exchange provisions of section 206 of the Federal Land Policy and Management Act of 1976(43 U.S.C. 1716) for a period of 2 years (See Part 2200).

§ 2091.2-2 Opening.

(a) The segregative effect of a Notice of Realty Action automatically terminates either:

(1) At the end of the periods set out in § 2091.2-1 of this title (See Part 2740); or

(2) As of the date specified in an opening order published in the Federal Register; or

(3) Upon issuance of a patent or other document of conveyance; whichever occurs first.

(b) Lands conveyed under either the Recreation and Public Purposes Act or sections 203 and 206 of the Federal Land Policy and Management Act, upon opening, remain segregated from the mining laws pending the issuance of such regulations as the Secretary may prescribe.

(c) Lands conveyed to the United States by exchange become public lands upon acceptance of title by the United States and become open to the operation of some or all of the public land laws, to the extent and on the date and time set forth in an opening order published in the Federal Register.

§ 2091.3 Segregation and opening resulting from the filing of an application or offer.

§ 2091.3-1 Segregation.

(a) The filing of an application for lands for selection by a State (exclusive of Alaska) segregates the lands included in the application for a period of 2 years from the date the application is filed. (See Subparts 2621 and 2622)

(b) The filing of a notice of an offer for exchange of lands within the National Forest System segregates the lands for a period of 2 years from the date of such filing with the authorized office. (See § 2203.1(b))

(c) The filing of an application and publication of the notice of the filing of an application in the Federal Register for the purchase of Federally-owned mineral interests under section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719) segregates the lands for a period of 2 years from the date of the publication of the notice of filing of the application with the authorized officer. (See Part 2720)

(d) The filing of an application for an airport lease under the Act of May 24, 1928, as amended (49 U.S.C. Appendix 211-213), or the filing of a request for an airport conveyance under the Airport and Airway Improvement Act of 1982

(49 U.S.C. 2215), segregates the lands as of the date of filing with the authorized officer. (See Part 2640 and Subpart 2911)

§ 2091.3-2 Opening.

(a) If the application or offer described in § 2091.3-1 of this title is not denied or otherwise terminated prior to the end of the 2-year segregative period, the segregative effect of the filing of the application or offer terminates either:

(1) Upon the issuance of a patent, other document of conveyance or lease to such lands; or

(2) Upon publication in the Federal Register of an opening order terminating the segregative effect and specifying the date and time of opening; or

(3) Automatically upon the expiration of the 2-year period commencing on the date the application or offer is filed; whichever occurs first.

(b) If the application or offer described in § 2091.3-1 of this title is denied or otherwise terminated prior to the end of the 2-year segregation period, the lands are opened by publication in the Federal Register of an opening order specifying the date and time of opening.

(c) Lands conveyed to the United States within the National Forest System under the authority of the Act of March 20, 1922, as amended (16 U.S.C. 485), or the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) are open to operation of all laws and regulations applicable to National Forest System lands on the date the lands are transferred to the National Forest System; and the public lands, as applicable, on the date of publication of a notice of availability.

§ 2091.4 Segregation and opening resulting from the allowance of entries, leases, grants or contracts.

§ 2091.4-1 Segregation and opening—Desert land entries and Indian allotments.

(a) Lands covered by an application for a desert land entry or Indian allotment become segregated on the date of allowance or approval of entry or allotment by the authorized officer. (See Parts 2520 and 2530).

(b) If an entry or allotment is cancelled or relinquished, the lands become open to the operation of the public land laws by publication in the Federal Register of an opening order which specifies the date and time of opening. (See Parts 2520 and 2530).

§ 2091.4-2 Segregation and opening—airport leases and grants.

(a) The issuance of a lease for airport purposes under the authority of the Act of May 24, 1928 or a patent or document of conveyance for airport and airway purposes under the authority of the Act of September 3, 1982, as amended (49 U.S.C. 2215), continues to segregate the lands. (See Part 2640 and Subpart 2911)

(b) If an airport lease is terminated, the lands are opened by publication in the Federal Register of an opening order which specifies the date and time of opening.

(c) The lands covered by an airport lease or grant remain open to the operation of the mineral leasing laws, the material disposal laws and the Geothermal Steam Act, but are segregated from the operation of the mining laws pending the issuance of such regulations as the Secretary may prescribe (See Part 2640 and Subpart 2911).

§ 2091.4-3 Segregation and opening—Carey Act.

(a) For lands covered by a Carey Act grant, publication of a notice in the Federal Register that a contract has been signed segregates the lands described in the contract, as of the date of publication of a 10 year period, from operation of the public land laws and the mineral laws as described in the notice. (See Part 2610).

(b) If the contract under the Carey Act is terminated, the lands are opened by publication in the Federal Register of an opening order which specifies the date and time of opening. Preference right of entry to Carey Act entrymen may be provided in accordance with the provisions of Subpart 2613 of this title.

§ 2091.5 Withdrawals.

§ 2091.5-1 Segregation of lands resulting from withdrawal applications filed on or after October 21, 1976.

(a) Publication in the Federal Register of a notice of an application or proposal for withdrawal, as provided in Subpart 2310 of this title, segregates the lands described in the withdrawal application or proposal to the extent specified in the notice. The segregative effect becomes effective on the date of publication and extends for a period of 2 years unless sooner terminated as set out below.

(b) Segregations resulting from applications and proposals filed on or after October 21, 1976, terminate:

(1) Automatically upon the expiration of a 2 year period from the date of publication in the Federal Register of the notice of the filing of an application or proposal for withdrawal;

(2) Upon the publication in the Federal Register of a Public Land Order effecting the withdrawal in whole or in part;

(3) Upon the publication in the Federal Register of a notice denying the withdrawal application or proposal, in whole or in part, giving the date and time the lands shall be open; or

(4) Publication in the Federal Register of a notice of request for cancellation of a withdrawal application or proposal, in whole or in part, giving the date and time the lands are open.

§ 2091.5-2 Segregation of lands resulting from withdrawal applications filed prior to October 21, 1976.

(a)(1) Lands covered by a withdrawal application or withdrawal proposal filed prior to October 21, 1976, were segregated on the date the application was properly filed and remain segregated through October 20, 1991, to the extent specified in notices published in the Federal Register, unless the segregative effect is terminated prior to that date in accordance with procedures in § 2091.5-1 of this title.

(2) Any amendment made to a withdrawal application filed prior to October 21, 1976, for the purpose of adding lands modifies the term of segregation for all lands covered by the amended application to conform with the provision of § 2091.5-1 of this title.

(b) Segregations resulting from applications filed under this section terminate in accordance with procedures in § 2091.5-1 of this title.

§ 2091.5-3 Segregative effect and opening—emergency withdrawals.

(a) When the Secretary determines that an emergency exists and extraordinary measures need to be taken to preserve values that would otherwise be lost, a withdrawal is made immediately in accordance with § 2310.5 of this title. Emergency withdrawals are effective on the date the Public Land Order making the withdrawal is signed, and cannot exceed 3 years in duration and may not be extended.

(b) The lands covered by an emergency withdrawal are opened automatically on the date of expiration of the withdrawal unless segregation is effected by the publication in the Federal Register of a notice of a withdrawal application or proposal.

§ 2091.5-4 Segregative effect and opening—water power withdrawals.

(a) Lands covered by powersite reserves, powersite classifications, and powersite designations are considered withdrawn and are segregated from operation of the public land laws, but are not withdrawn and segregated from the operation of the mineral laws.

(b) These lands may be opened to operation of the public land laws after a revocation or cancellation order issued by the Department of the Interior or after a determination to open the lands is made by the Federal Energy Regulatory Commission under section 24

the Federal Power Act. (See Subpart 0) Mining claims may be located on h lands under procedures in Subpart 3730 of this title. These lands are opened by publication in the Federal Register of an opening order specifying the extent, date and time of opening.

§ 2091.5-5 Segregative effect and opening—Federal Power Act withdrawals.

(a)(1) The filing of an application for a power project with the Federal Energy Regulatory Commission withdraws the lands covered by the application from the operation of the public land laws; however, the lands remain open to the location, lease or disposal of the mineral estate.

(2) The issuance of a permit or license for a project by the Federal Energy Regulatory Commission withdraws the lands from the operation of the mining laws. (See Part 3730).

(b) Lands withdrawn under section 24 of the Federal Power Act remain withdrawn until the withdrawal is vacated and the lands opened by proper authority.

(c) After a withdrawal has been vacated, the lands are opened to the operation of the public land laws by notation of the lands records to that effect.

2091.5-6 Congressional withdrawals and ening of lands.

(a) Congressional withdrawals become effective and are terminated as specified in the statute making the withdrawal. If the statute does not specify the date, duration and extent of segregation, the Secretary shall publish in the Federal Register a Public Land Order so specifying.

(b) If the statute does not specify when and to what extent the lands are to be opened, the Secretary publishes in the Federal Register an opening order so specifying.

§ 2091.6 Opening of withdrawn lands—general.

The term of a withdrawal ends upon expiration under its own terms, or upon revocation or termination by the Secretary by publication in the Federal Register of a Public Land Order. Lands included in a withdrawal that is revoked, terminates or expires do not automatically become open, but are opened through publication in the Federal Register of an opening order. An opening order may be incorporated in a Public Land Order that revokes or terminates a withdrawal or may be published in the Federal Register as a separate document. In each case, the pening order specifies the time, date nd specific conditions under which the lands are opened. (See Subpart 2310.)

§ 2091.7 Segregation and opening of lands classified for a specific use.

§ 2091.7-1 Segregative effect and opening classifications.

(a)(1) Lands classified under the authority of the Recreation and the Public Purposes Act, as amended (43 U.S.C. 869-4), and the Small Tract Act (43 U.S.C. 682a) are segregated from the operation of the public land laws, including the mining laws, but not the mineral leasing laws, the material disposal laws, and the Geothermal Steam Act, except as provided in the notice of realty action.

(2) Lands classified under the authority of the Classification and Multiple Use Act (43 U.S.C. 1411-18) are segregated to the extent described in the notice of classification.

(b) The segregative effect of the classification described in § 2091.7-1 of this title terminates and the lands are opened under the following procedures:

(1) Recreation and Public Purposes Act classifications; (i) Made after the effective date of these regulations terminate and the lands automatically become open at the end of the 18-month period of segregation specified in part 2470 of this title, unless an application is filed; (ii) made prior to the effective date of these regulations where the 18-month period of segregation specified in part 2470 of this title is in effect on the effective date of these regulations, expire and the lands automatically become open at the end of the 18-month period of segregation unless an application is filed; (iii) made prior to the effective date on these regulations where the 18-month period of segregation has expired prior to the effective date of these regulations, terminate by publication in the Federal Register of an opening order specifying the date and time of opening.

(2) Small Tract Act classifications terminate by publication in the Federal Register of an opening order specifying the date and time of opening.

(3) Classification and Multiple Use Act classification shall be terminated by publication in the Federal Register of an opening order specifying the date and time of opening.

§ 2091.7-2 Segregative effect and opening—Taylor Grazing Act.

Lands classified under section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f), are segregated to the extent described in the classification notice. The segregative effect for Desert Land entries, Indian allotments, State selections (exclusive of Alaska) and Carey Act grants made after the effective date of these regulations remains in effect until terminated by publication in the Federal Register of an opening order specifying the date and time of opening or upon issuance of a patent or other document of conveyance,

§ 2091.9 Segregation and opening resulting from laws specific to Alaska.

§ 2091.9-1 Alaska Native selections.

The segregation and opening of lands authorized for selection and selected by Alaska Natives under the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.), are covered by Part 2650 of this title.

§ 2091.9-2 Selections by the State of Alaska.

The segregation and opening of lands authorized for selection and selected by the State of Alaska under the various statutes granting lands to the State of Alaska are covered by Subpart 2627 of this title.

§ 2091.9-3 Lands in Alaska under grazing lease.

The segregation and opening of lands covered by the Act of March 4, 1927 (43 U.S.C. 316, 316a-316o) are covered by Part 4200 of this title.

[FR Doc. 87-8342 Filed 4-14-87; 8:45 am]
BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6749]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The third date ("Susp.") listed in the forth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant

Corrections

Federal Register
Vol. 52, No. 78
Thursday, April 23, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2090

[Circular No. 2593; AA-320-87-4220]

Special Laws and Rules; Restatement of Procedures for the Segregation and Opening of Public Lands

Correction

In rule document 87-8342 beginning on page 12171 in the issue of Wednesday, April 15, 1987, make the following correction:

§ 2091.3-1 [Corrected]

On page 12176, in the third column, in § 2091.3-1, in the last line of paragraph (b), "§ 2203.1(b)" should read "§ 2202.1(b)".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 20

Debt Collection Act of 1982; Salary Offset

Correction

In rule document 87-2295 beginning on page 3772 in the issue of Thursday, February 5, 1987, make the following correction:

§ 20.81 [Corrected]

On page 3775, in § 20.81(c), in the first column, in the ninth line, insert "debt" before "and".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2090

[AA-320-07-4211-02; Circular No. 2594]

Special Laws and Rules; Final Rulemaking Removing Obsolete Provisions Concerning Homestead Requirements for Veterans

PART 2090—[AMENDED]

1. An authority citation for Part 2090 is added to read:

Authority: R.S. 2478 (43 U.S.C. 1201); R.S. 2275, 2276 (43 U.S.C. 851, 852); 43 U.S.C. 869 et seq.; 43 U.S.C. 641 et seq.; 43 U.S.C. 321–323; 43 U.S.C. 231, 321, 323, 327–329; 25 U.S.C. 334; 25 U.S.C. 336; 16 U.S.C. 485; 72 Stat. 339–340; 43 U.S.C. 852 note; 16 U.S.C. 818; 43 U.S.C. 315f; 43 U.S.C. 1601 et seq.; 16 U.S.C. 3101 et seq.; 43 U.S.C. 1701 et seq.; 30 U.S.C. 189; 48 U.S.C. 462 note.

Subpart 2096—[Removed]

2. Part 2090 is amended by removing Subpart 2096 in its entirety.

Dated: April 13, 1987.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 87-8886 Filed 4-20-87; 8:45 am]

Published in 52 F.R. 13084, dated April 21, 1987 - Effective April 21, 1987

#2594

tricts and the ocean areas lying east a line extending from the North Pole south along 95° W. longitude to the North American land mass; thence along the east coast of the North, Central, and South American land mass to the intersection with 70° W. longitude; thence due south to the South Pole. These waters extend east to the Eastern Hemisphere dividing line between the Atlantic and Pacific Areas which lies along a line extending from the North Pole south along 100° E. longitude to the Asian land mass and along a line extending from the South Pole north along 17° E. longitude to the African land mass.

4. In § 3.04–3, paragraph (b) is revised to read as follows:

§ 3.04–3 Pacific area.

* * * * *

(b) The Pacific Area is comprised of the land areas and the U.S. navigable waters of the Eleventh, Thirteenth, Fourteenth, and Seventeenth Coast Guard Districts and the ocean areas lying west of a line extending from the North Pole south along 95° W. longitude to the North American land mass; thence along the west coast of the North, Central, and South American land mass to the intersection with 70° W. longitude; thence due south to the South Pole. These waters extend west to the Eastern Hemisphere dividing line between the Atlantic and Pacific Areas which lies along a line extending from the North Pole south along 100° E. longitude to the Asian land mass and along a line extending from the South Pole north along 17° E. longitude to the African land mass.

5. In § 3.05–1, paragraph (b) is revised to read as follows:

§ 3.05–1 First district.

* * * * *

(b) The First Coast Guard District is comprised of: Maine; New Hampshire; Vermont; Massachusetts; Rhode Island; Connecticut; New York except that part north of latitude 42°N. and west of longitude 74°39′ W; that part of New Jersey north of 39°57′ N. latitude, east of 74°27′ W. longitude, and northeast of a line from 39°57′ N. 74°27′ W. north west to the New York, New Jersey, & Pennsylvania boundaries at Tristate; all U.S. naval reservations on shore at Newfoundland; the ocean area encompassed by the Search and Rescue boundary between Canada and the United States easterly to longitude 63° W; thence due south to latitude 41°N; ence southwesterly along a line earing 219° T to the point of intersecuon at 36°43′, N. latitude, 67°30′ W. longitude with a line bearing 122° T from the New Jersey shoreline at 39°57′ N latitude (in the vicinity of Tom's River, New Jersey); thence northwesterly along this line to the coast.

§ 3.15–1 [Removed]

6. In Subpart 3.15, the subpart heading and § 3.15–1 are removed.

§ 3.15–10 [Redesignated as § 3.05–25]

7. Section 3.15–10 is redesignated § 3.05–25.

§ 3.15–25 [Redesignated as § 3.25–05]

8. Section 3.15–25 is redesignated § 3.25–05.

§ 3.15–55 [Redesignated as § 3.05–35]

9. Section 3.15–55 is redesignated as § 3.05–35.

§ 3.15–60 [Redesignated as § 3.05–30]

10. Section 3.15–60 is redesignated as § 3.05–30.

11. In § 3.25–1, paragraph (b) is revised to read as follows:

§ 3.25–1 Fifth district.

* * * * *

(b) The Fifth Coast Guard District is comprised of: Delaware; Maryland; Virginia; District of Columbia; North Carolina; that portion of New Jersey south of 39°57′ N. latitude, west of 74°27′ W. longitude, and southwest of a line extending northwesterly from 39°57′ N., 74°27′ W. to the New York, New Jersey, and Pennsylvania boundaries at Tristate; that portion of Pennsylvania east of a line drawn along 78°55′ W. longitude south to 41°00′ N. latitude, thence west to 70°00′ W. longitude, and thence south to the Pennsylvania-Maryland boundary; the ocean area encompassed by a line bearing 122° T from the New Jersey shoreline at 39°57′ N. latitude (in the vicinity of Tom's River, New Jersey) to 36°43′ N. latitude, 67°30′ W. longitude; thence along a line bearing 219° T to the point of intersection with a line bearing 122°T from the shoreline at the North Carolina—South Carolina border; thence northwesterly along this line to the coast.

12. In § 3.55–1, paragraph (b) is revised to read as follows:

§ 3.55–1 Eleventh district.

* * * * *

(b) The Eleventh Coast Guard District is comprised of: Arizona; Utah; Nevada; California; and the ocean area bounded by a line from the California-Oregon state line westerly to 40° N. latitude, 150° W. longitude; thence southeasterly to 5° S. latitude, 100° W. longitude; thence northeasterly to the border between Guatemala and Mexico on the Pacific Coast (14°38′ N. latitude, 92°19′ W. longitude).

§§ 360–1 and 3.60–10 [Removed]

13. In Subpart 3.60, the subpart heading and §§ 3.60–1 and 3.60–10 are removed.

§ 3.60–55 [Redesignated as § 3.55–20]

14. Section 3.60–55 is redesignated as § 3.55–20.

Dated: April 16, 1987.

J.C. Irwin,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 87–8892 Filed 4–20–87; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2090

[AA–320–07–4211–02; Circular No. 2594]

Special Laws and Rules; Final Rulemaking Removing Obsolete Provisions Concerning Homestead Requirements for Veterans

AGENCY: Bureau of Land Management, Interior.

ACTION: Final Rulemaking Removing Obsolete Regulatory Provisions Concerning Homestead Requirements for Veterans.

SUMMARY: This final rulemaking will delete from the existing regulations in 43 CFR Part 2090 obsolete provisions under which veterans could become eligible for a homestead entry on the public lands. These provisions have become obsolete because all laws governing homestead entries on public lands in the fourteen Western States and Alaska were repealed by section 702 of the Federal Land Policy and Management Act of 1976. The Subpart was retained after the enactment of the Federal Land Policy and Management Act to facilitate the processing of veteran homestead entries pending at that time.

EFFECTIVE DATE: April 21, 1987.

ADDRESS: Any inquiries or suggestions should be sent to: Director (320), Bureau of Land Management, Room 3643, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gary L. Rowe, (202) 343–8693.

SUPPLEMENTARY INFORMATION: This final rulemaking reflects the administrative action of removing from the existing regulations provisions whose statutory authority has been

repealed. Therefore, this document is published as a final rulemaking with an effective date as of the date of publication. The provisions being removed are those covering entries for veterans homesteads authorized by the Act of October 17, 1940, as amended (50 U.S.C. App. 561–572) and the Act of September 27, 1944, as amended (43 U.S.C. 279–283). The regulatory provisions have been retained to facilitate the processing of applications that were pending at the time the statutes were repealed. All pending actions have been completed, and, therefore, the regulations are no longer needed. This administrative action removes the regulations in Subpart 2096 from the Code of Federal Regulations. To the extent that any question may exist or arise concerning rights associated with the regulations being removed, earlier editions of the Code of Federal Regulations will remain available to assist in interpretation.

The principal author of this final rulemaking is Gary L. Rowe, Division of Lands, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

There are no information collection requirements contained in this final rulemaking requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 2090

Airports, Alaska, Coal, Grazing lands, Indian lands, Public lands—classification, Public lands—mineral resources, Public lands—withdrawal, Seashores, Veterans.

Under the authority of Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 2090, Group 2000, Subchapter B, Chapter II of the Code of Federal Regulations is amended as set forth below.

Dated: April 13, 1987.

J. Steven Griles,

Assistant Secretary of the Interior.

PART 2090—[AMENDED]

1. An authority citation for Part 2090 is added to read:

Authority: R.S. 2478 (43 U.S.C. 1201); R.S. 2275, 2276 (43 U.S.C. 851, 852); 43 U.S.C. 869 et seq.; 43 U.S.C. 641 et seq.; 43 U.S.C. 321–323; 43 U.S.C. 231, 321, 323, 327–329; 25 U.S.C. 334; 25 U.S.C. 336; 16 U.S.C. 485; 72 Stat. 339–340; 43 U.S.C. 852 note; 16 U.S.C. 818; 43 U.S.C. 315f; 43 U.S.C. 1601 et seq.; 16 U.S.C. 3101 et seq.; 43 U.S.C. 1701 et seq.; 30 U.S.C. 189; 48 U.S.C. 462 note.

Subpart 2096—[Removed]

2. Part 2090 is amended by removing Subpart 2096 in its entirety.

[FR Doc. 87–8886 Filed 4–20–87; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2800 and 2880

[Circular No. 2595; AA-330-07-02-NCPF-2410]

Rights-of-Way, Principles and Procedures; Rental Determination

PART 2800—[AMENDED]

1. The authority citation for Part 2800 continues to read:

Authority: 43 U.S.C. 1761-1771.

2. Section 2803.1-2 is revised to read:

§ 2803.1-2 Rental.

(a) The holder of a right-of-way grant or temporary use permit shall pay annually, in advance, except as provided in paragraph (b) of this section, the fair market rental value as determined by the authorized officer applying sound business management principles and, so far as practicable and feasible, using comparable commercial practices. Annual rent billing periods shall be set or adjusted to coincide with the calendar year (January 1 through December 31) by proration on the basis of 12 months; the initial month shall not be counted for right-of-way grants or temporary use permits having an anniversary date of the 15th or later in the month and the terminal month shall not be counted if the termination date is the 14th or earlier in the month. Rental shall be determined in accordance with the provisions of paragraph (c) of this section; provided, however, that the minimum rental under paragaph (c)(1) shall not be less than the annual payment required by the schedule for 1 acre; provided, further, that in those instances where the annual payment is $100 or less, the authorized officer may require an advance lump sum payment for 5 years.

(b)(1) No rental shall be collected where:

(i) The holder is a Federal, State or local government or agency or instrumentality thereof, except municipal utilities and cooperatives whose principal source of revenue is customer charges;

(ii) The right-of-way was issued pursuant to a statute that did not or does not require the payment of rental; or

(iii) The facilities constructed on a site or linear right-of-way are or were financed in whole or in part under the Rural Electrification Act of 1936, as amended, or are extensions from such Rural Electrification Act financed facilities.

(2) The authorized officer may reduce or waive the rental payment under the following instances:

(i) The holder is a nonprofit corporation or association which is not controlled by or is not a subsidiary of a profit making corporation or business enterprise;

(ii) The holder provides without charge, or at reduced rates, a valuable benefit to the public or to the programs of the Secretary;

(iii) The holder holds an outstanding permit, lease, license or contract for which the United States is already receiving compensation, except under an oil and gas lease where the lessee is required to secure a right-of-way grant or temporary use permit under part 2880 of this title; and:

(A) Needs a right-of-way grant or temporary use permit within the exterior boundaries of the permit, lease, license or contract area; or

(B) Needs a right-of-way across the public lands outside the permit, lease, license or contract area in order to reach said area;

(iv) With the concurrence of the State Director, the authorized officer, after consultation with an applicant/holder, determines that the requirement to pay the full rental will cause undue hardship on the holder/applicant and that it is in the public interest to reduce or waive said rental. In order to complete such consultation, the State Director may require the applicant/holder to submit data, information and other written material in support of a proposed finding that the right-of-way grant or temporary use permit qualifies for a reduction or waiver of rental; and

(v) A right-of-way involves a cost share road or reciprocal right-of-way agreement not subject to part 2812 of this title. Any fair market value rental required to be paid under this paragraph (b)(2)(v) shall be determined by the proportion of use.

(c)(1)(i) Except for those linear right-of-way grants or temporary use permits that the authorized officer determines under paragraph (c)(1)(v) of this section to require an individual appraisal, an applicant shall, prior to the issuance of a linear right-of-way grant or temporary use permit, submit an annual rental payment in advance for such right-of-way grant or temporary use permit in accordance with the following schedule:

PER ACRE RENTAL FEE ZONE VALUE

Zone value	Oil and gas and other energy related pipelines, roads, ditches and canals	Electric transmission lines, telephone electric distribution, non-energy related pipelines, and other linear rights-of-way
$50	$2.56	$2.24
100	5.13	4.49
200	10.26	8.97
300	15.38	13.46
400	20.51	17.95
500	25.64	22.44
600	30.77	26.92
1,000	51.28	44.87

(The values are based on zone value × impact adjustment × interest rate (6.41—1-year Treasury Securities "Constant Maturity" rate for June 30, 1986. The rate will remain constant except as provided in subparagraphs (ii) and (iii) of this section.)

A per acre rental schedule by State, County, and type of linear right-of-way use, which will be updated annually, is available from any Bureau State or District office or may be obtained by writing: Director (330), Bureau of Land Management, Room 3660, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

(ii) The schedule will be adjusted annually by multiplying the current year's rental per acre by the annual change, second quarter to the second quarter (June 30 to June 30), in the Gross National Product Implicit Price Deflator Index as published in the *Survey of Current Business* of the Department of Commerce, Bureau of Economic Analysis.

(iii) At such times as the cumulative change in the index used in paragraph (c)(1)(ii) of this section exceeds 30 percent or the change in the 3-year average of the 1-year interest rate exceeds plus or minus 50 percent, the

zones and rental per acre figures shall be reviewed to determine whether market and business practices have differed sufficiently from the index to warrant a revision in the base zones and rental per acre figures. Measurements shall be taken at the end of the second quarter (June 30) of the year beginning with calendar year 1988. The initial bases (June 30, 1988) for these two indexes are: Gross National Product Price Implicit Price Deflator Index was 114.0 and the 3-year average of the 1-year Treasury interest rate was 8.86%.

(iv) Rental for the ensuing calendar year for any single right-of-way grant or temporary use permit shall be the rental per acre from the current schedule times the number of acres embraced in the grant or permit, rounded to the nearest whole dollar, unless such rental is reduced or waived as provided in paragraph (b)(2) of this section.

(v) The authorized officer shall use the fee schedule unless the authorized officer determines:

(A) A substantial segment or area within the right-of-way exceeds the zone(s) value by a factor of 10; and

(B) In the judgment of the authorized officer, the expected valuation is sufficient to warrant a separate appraisal.

Once the rental for a right-of-way grant has been determined by use of the rental schedule, the provisions of this subparagraph shall not be used as a basis for removing it from the schedule.

(2)(i) Existing linear right-of-way grants and temporary use permits may be made subject to the schedule provided by this paragraph upon reasonable notice to the holder. The notice shall provide the reasons for making the right-of-way subject to the schedule.

(ii) Where the new annual rental exceeds $100 and is more than a 100 percent increase over the current rental, the amount of increase in excess of the 100 percent increase shall be phased in by equal increments, plus the annual adjustment, over a 3-year period.

(3)(i) The rental for linear right-of-way grants and temporary use permits not covered by the schedule set out above in this paragraph, including those determined by the authorized officer to require an individual appraisal under paragraph (c)(1)(v) of this section. And for non-linear-right-of-way grants and temporary use permits (e.g., communications sites, reservoir sites, plant sites and storage sites) shall be determined by the authorized officer and paid annually in advance. Said rental shall be based on either a market survey of comparable rentals, or on a value determination for specific parcels or groups of parcels unless such rental is reduced or waived as provided in paragraph (b) of this section. All such rental determinations shall be prepared to the standards and format described in the Uniform Appraisal Standards for Federal Land Acquisition (Department of Justice publication) and/or in certain cases as required by the Bureau's Appraisal manual (9300). Where the authorized officer determines that a competitive interest exists for site type right-of-way grants such as wind farms, communications sites, etc., rental may be determined through competitive bidding procedures set out in § 2803.1–3 of this title.

(ii) To expedite the processing of any grant or permit covered by paragraph (c)(3) of this section, the authorized officer may estimate rental and collect a deposit in advance with the agreement that upon completion of a rental value determination, the advance deposit shall be adjusted according to the final fair market rental value determination.

(4) Decisions on rental determinations are subject to appeal under subpart 2804 of this title.

(5) Upon the holder's written request, rentals may be prepaid for 5 years in advance.

(d) If the rental required by this section is not paid when due, and such default for nonpayment default continues for 30 days after notice, action may be taken to terminate the right-of-way grant or temporary use permit. After default has occurred, no structures, buildings or other equipment may be removed from the subservient lands except upon written permission from the authorized officer.

3. Sections 2803.1–3 and 2803.1–4 are redesignated §§ 2803.1–4 and 2803.1–5, respectively.

4. A new § 2803.1–3 is added to read:

§ 2803.1–3 Competitive bidding.

(a) The authorized officer may identify and offer public lands for competitive right-of-way use either on his/her own motion or as a result of nomination by the public. Competitive bidding shall be used only for site-type right-of-way grants such as wind farms and communication sites. The authorized officer shall give public notice of such decision through publication of a notice of realty action as provided in paragraph (c)(1) of this section. The decision to offer public lands for competitive right-of-way use shall conform to the requirements of the Bureau's land use planning process. The authorized officer shall not offer public lands for competitive right-of-way use where equities such as prior or related use of said lands warrant issuance of a noncompetitive right-of-way grant(s).

(b) A right-of-way grant issued pursuant to a competitive offer shall be awarded on the basis of the public benefit to be provided, the financial and technical capability of the bidder to undertake the project and the bid offer. Each bid shall be accompanied by the information required by the notice of realty action and a statement over the signature of the bidder or anyone authorized to sign for the bidder that he/she is in compliance with the requirements of the law and these regulations. A bid of less than the fair market rental value of the lands offered shall not be considered.

(c) The offering of public lands for right-of-way use under competitive bidding procedures shall be conducted in accordance with the following:

(1)(i) A notice of realty action indicating the availability of public lands for competitive right-of-way offering shall be published in the **Federal Register** and at least once a week for 3 consecutive weeks in a newspaper of general circulation in the area where the public lands are situated or in such other publication as the authorized officer may determine. The successful qualified bidder shall, prior to the issuance of the right-of-way grant, pay his/her proportionate share of the total cost of publication.

(ii) The notice of realty action shall include the use proposed for the public lands and the time, date and place of the offering, including a description of the lands being offered, terms and conditions of the grant(s), rates, bidding requirements, payment required, where bid forms may be obtained, the form in which the bids shall be submitted and any other information or requirements determined appropriate by the authorized officer.

(2) Bids may be made either by a principal or duly qualified agent.

(3) All sealed bids shall be opened at the time and date specified in the notice of realty action, but no bids shall be accepted or rejected at that time. The right to reject any and all bids is reserved. Only those bids received by the close of business on the day prior to the bid opening or at such other time stated in the notice of realty action and made for at least the minimum acceptable bid shall be considered. Each bid shall be accompanied by U.S. currency or certified check, postal money order, bank draft or cashier's check payable in U.S. currency and made payable to the Department of the Interior—Bureau of Land Management for not less than one-fifth of the amount of the bid, and shall be enclosed in a sealed envelope which shall be marked as prescribed in the notice of realty

action. If 2 or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing unless another method is specified in the notice of realty action. The drawing shall be held by the authorized officer immediately following the opening of the sealed bids.

(4) In the event the authorized officer rejects the highest qualified bid or releases the bidder from such bid, the authorized officer shall determine whether the public lands involved in the offering shall be offered to the next highest bidder, withdrawn from the market or reoffered.

(5) If the highest qualified bid is accepted by the authorized officer, the grant form(s) shall be forwarded to the qualifying bidder for signing. The signed grant form(s) with the payment of the balance of the first year's rental and the publication costs shall be returned within 30 days of its receipt by the highest qualified bidder and shall qualify as acceptance of the right-of-way grant(s).

(6) If the successful qualified bidder fails to execute the grant form(s) and pay the balance of the rental payment and the costs of publication within the allowed time, or otherwise fails to comply with the regulations of this subpart, the one-fifth remittance accompanying the bid shall be forfeited.

§ 2803.6–3 [Amended]

5. Section 2803.6–3 is amended by removing from where it appears in the next to last sentence the phrase "plus any additional terms and conditions and any special stipulations that the authorized officer may impose" and adding at the end of the section a new sentence "The authorized officer may, at the time of approval of the assignment, modify or add bonding requirements."

6. Section 2803.6–4 is revised to read:

§ 2803.6–4 Reimbursement of costs for assignments.

(a) All filings for assignments, except as provided in paragraph (b) of this section, made pursuant to this section shall be accompanied by a non-refundable payment of $50 from the assignor. Exceptions for a nonrefundable payment for an assignment are the same as in § 2803.1 of this title.

(b) Where a holder assigns more than 1 right-of-way grant as a single action, the authorized officer may, due to economies of scale, set a nonrefundable fee of less than $50 per assignment.

PART 2880—[AMENDED]

7. The authority citation for Part 2880 continues to read:

Authority: 30 U.S.C. 185, unless otherwise noted.

§ 2881.1–1 [Amended]

8. Section 2881.1–1(g) is amended by removing the period at the end of the last sentence thereof and adding the phrase ", except that where a holder assigns more than 1 right-of-way grant as part of a single action, the authorized officer, due to economies of scale, may set a fee of less than $50 per assignment."

§ 2881.2 [Amended]

9. Section 2881.2 is amended by removing paragraph (a)(2) in its entirety and redesignating the existing paragraphs (a) (3), (4), and (5) as paragraphs (a) (2), (3), and (4), respectively.

§ 2883.1–2 [Amended]

10. Section 2883.1–2 is amended by removing from where it appears the citation "§ 2803.1–2(c)" and replacing it with the citation "§ 2803.1–2(b)".

J. Steven Griles,

Assistant Secretary of the Interior.

May 1, 1987.

[FR Doc. 87–15482 Filed 7–7–87; 8:45 am]

43 CFR Parts 2800 and 2880

[AA-330-07-02-NCPF-2410]

Rights-of-Way, Principles and Procedures and Rights-of-Way Under the Mineral Leasing Act; Correction

§ 2803.1–2 [Corrected]

4. On page 25818, column 3, § 2803.1–2(a), the third sentence thereof is corrected by removing the phrase "that the minimum rental under paragraph (c)(1) shall not be less than the annual payment required by the schedule for 1 acre; provided, further," because its retention in the final rulemaking was an oversight. The preamble to the final rulemaking discusses its removal.

5. On page 25819, column 3, § 2803.1–2(c)(3)(i), the phrase "under paragraph (c)(1)(v) of this section. And for non-linear right-of-way grants and temporary use permits (e.g., communications sites," is corrected to read "under paragraph (c)(1)(v) of this section, and for non-linear right-of-way grants and temporary use permits (e.g., communication sites,".

6. On page 25820, column 1, § 2803.1–2(c)(3)(i), in the last sentence thereof the phrase "communications sites," is corrected to read "communication sites,".

8. On page 25820, column 1, § 2803.1–2(d), the phrase "and such default for nonpayment default continues" is corrected to read "and such default for nonpayment continues".

James E. Cason,

Deputy Assistant Secretary of the Interior.

September 23, 1987.

[FR Doc. 87–22546 Filed 9–29–87; 8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2800

[Circular No. 2596; AA-330-07-4211-02-NCPF-2410]

Rights-of-Way, Principles and Procedures; Recovery of Costs

Under the authority of Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761-1771), Part 2300, Group 2800, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

PART 2800—[AMENDED]

1. The authority citation for part 2800 continues to read:

Authority: 43 U.S.C. 1761-1771.

2. Section 2800.0-5 is amended by adding new paragraphs (o) through (t) to read:

§ 2800.0-5 Definitions.

* * * * *

(o) "Actual costs" means the financial measure of resources expended or used by the Bureau of Land Management in processing a right-of-way application or monitoring the construction, operation and termination of a facility authorized by a grant or permit. "Actual costs" includes both direct and indirect costs, exclusive of management overhead.

(p) "Monetary value of the rights and privileges sought" means the objective value of the right-of-way or permit or what the right-of-way grant or temporary use permit is worth in financial terms to the applicant.

(q) "Cost incurred for the benefit of the general public interest" (public benefit) means funds expended by the United States in connection with the processing of an application for studies and data collection determined to have value or utility to the United States or the general public separate and apart from application processing.

(r) "Public service provided" means tangible improvements, such as roads, trails, recreation facilities, etc., with significant public value that are expected in connection with the construction and operation of the project for which a right-of-way grant is sought.

(s) "Efficiency to the Government processing" means the ability of the United States to process an application with a minimum of waste, expense and effort.

(t) "Management overhead costs" means costs associated with the Bureau directorate, including all State Directors and the entire Washington Office staff, except where a member of such staffs is required to perform work on a specific right-of-way or temporary use permit case.

§ 2802.1 [Amended]

3. Section 2802.1(c) is amended by removing from where it appears the citation "§ 2803.1-1" and replacing it with the citation "Subpart 2808".

§ 2802.4 [Amended]

4. Section 2802.4(a) is amended by removing from where it appears the citation "§ 2803.1-1" and replacing it with the citation "Subpart 2808".

§ 2802.5 [Amended]

5. Section 2802.5(a)(1) is amended by removing from where it appears the citation "§ 2803.1-1" and replacing it with the citation "Subpart 2808".

§ 2803.1-1 [Removed]

6. Section 2803.1-1 is removed in its entirety.

§ 2803.6-5 [Amended]

7. Section 2803.6-5(d) is amended by removing from where it appears the citation "§ 2803.1-1" and replacing it with the citation "Subpart 2808".

8. A new Subpart 2808 is added to read:

Subpart 2808—Reimbursement of Costs

Sec.

2808.1 General.
2808.2 Cost recovery categories.
2808.2-1 Application categories.
2808.2-2 Category determinations.
2808.3 Fees and payments.
2808.3-1 Application fees.
2808.3-2 Periodic advance payments.
2808.3-3 Cost incurred for a withdrawn or denied application.
2808.3-4 Joint liability for payments.
2808.4 Reimbursement of cost of monitoring.
2808.5 Other cost considerations.
2808.6 Actions pending decisions on appeal.

Subpart 2808—Reimbursement of Costs

§ 2808.1 General.

(a) An applicant for a right-of-way grant or temporary use permit under this part shall reimburse the United States in advance for the expected reasonable administrative and other costs incurred by the United States in processing the application, including the preparation of any reports or statements pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), prior to the United States having incurred such costs.

(b) The regulations in thissubpart do not apply to the following:

(1) Federal agencies;

(2) State and local governments or agencies or instrumentalities thereof when a right-of-way grant or temporary use permit is granted for governmental purposes benefiting the general public. However, if the principal source of revenue results from charges being levied on customers for services similar to those rendered by a profitmaking corporation or business, they shall not be exempt; or

(3) Cost share roads or reciprocal right-of-way agreements.

§ 2808.2 Cost recovery categories.

§ 2808.2-1 Application categories.

(a) The following categories shall be used to establish the appropriate nonrefundable fee for each application pursuant to the fee schedule in § 2808.3-1 of this title:

(1) *Category I.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which the data necessary to comply with the National Environmental Policy Act and other statutes are available in the office of the authorized officer or from data furnished by the applicant; and no field examination is required.

(2) *Category II.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which the data necessary to comply with the National Environmental Policy Act and other statutes are available in the office of the authorized officer or from data furnished by the applicant; and 1 field examination to verify existing data is required.

(3) *Category III.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which the data necessary to comply with the National Environmental Policy Act and other statutes are available in the office of the authorized officer or

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from data furnished by the applicant; and 2 field examinations to verify existing data are required.

(4) *Category IV.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which some original data are required to be gathered to comply with the National Enviromental Policy Act and other statutes; and 2 or 3 field examinations are required.

(5) *Category V.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which the gathering of original data are required to comply with the National Enviromental Policy Act and other statutes; and 3 or more field examinations are required.

§ 2808.2-2 Category determination.

(a) The authorized officer shall determine the appropriate category and collect the required application processing fee pursuant to §§ 2808.3-1 and 2808.5 of this title before processing an application. A record of the authorized officer's category determination shall be made and given to the applicant. This determination is a final decision for purposes of appeal under § 2804.1 of this title. Where an appeal is filed, actions pending decision on appeal shall be in accordance with § 2808.6 of this title.

(b) During the processing of an application, the authorized officer may change a category determination to place an application in Category V at any time it is determined that the application requires the preparation of an environmental impact statement. A record of change in category determination under this paragraph shall be made and furnished to the applicant. The revised determination is appealable in the same manner as an original category determination under paragraph (a) of this section. No other changes of category determination shall be permitted.

§ 2808.3 Fees and payments.

§ 2808.3-1 Application fees.

(a) The fee by category for processing an application for a right-of-way or temporary use permit is:

Category	Fee
I	$125
II	300
III	550
IV	925
V	[1]

[1] As required.

(b) Where the amount submitted by the applicant under paragraph (a) of this section exceeds the amount of the required fee determined by the authorized officer, the excess shall be refunded. If requested in writing by the applicant, the authorized officer may apply all or part of any such refund to the grant monitoring fee required under § 2808.4 of this title or to the rental payment required by § 2803.1-2 of this title.

(c) Upon a determination that an application falls under Cagetory V:

(1) The authorized officer shall:

(i) Complete a preliminary scoping of the issues involved;

(ii) Prepare a preliminary work plan;

(iii) Develop a preliminary financial plan, estimating the actual costs to be incurred by the United States in the processing of the application; and

(iv) Discuss funding availability, options for cost reimbursement (i.e., a determination of actual costs under section 304(b) of the Act, paying all actual costs, or selecting the 1 percent ceiling), and information to be submitted by the applicant, including construction costs and other financial information.

(2) An applicant/holder may submit a written analysis of the estimated actual cost showing specific monetary value considerations, public benefits, public services, or other data or information which would support a finding that an application for a right-of-way grant or temporary use permit qualified for a reduction or waiver of cost reimbursement under section 303(b) of the Act or § 2808.5 of this title. If the applicant elects a cost analysis under this paragraph, the provisions of paragraph (f) of this section shall not apply.

(d) The authorized officer shall discuss the preliminary plans and data and verify the information that may be submitted under paragraph (c) of this section by the applicant. The applicant is encouraged to do all or part of any special study or analysis required in connection with the processing of the application to standards established by the authorized officer.

(e) After coordination with the applicant as required by paragraph (d) of this section, the authorized officer shall develop final scoping, work and financial plans which reflect any work the applicant agrees to do and complete a final estimate of the amount of the actual costs to be reimbursed by the applicant, giving consideration to the factors set forth in section 304(b) of the Act.

(f) An applicant may elect to waive consideration of reasonable costs under paragraph (e) of this section and either: (1) Agree to pay all actual costs incurred by the United States in processing the application and monitoring the grant or temporary use permit; or (2) pay the actual costs of processing the application and monitoring the right-of-way grant up to the amount estimated by the authorized officer to equal 1 percent of the applicant's planned costs of construction of the project on the public lands for which a right-of-way grant is sought. Under this alternative, the applicant shall not be responsible for actual costs exceeding 1 percent of the estimated cost of constructing the proposed facilities on public lands. The request for a waiver shall be in writing and filed with the authorized officer.

(g) The applicant shall reimburse the United States for the applicant's share of costs, as determined under paragraphs (e) and (f) of this section, before the grant or permit shall issue.

(h) Where a State Director grants a reduction or waiver of cost reimbursement under the provisions of paragraph (e) of this section and/or § 2808.5 of this title or where the reimbursable costs of processing an application are determined to exceed 1 percent of the cost of construction of the facilities under paragraph (f) of this section, the necessary funding shall be available either through the Bureau's appropriation process or otherwise made available for the processing of the application or such processing shall not proceed.

(i) The authorized officer shall provide the applicant with a written determination of the reasonable costs to be reimbursed by the applicant or holder and those that will be funded by the United States under paragraphs (e) and (f) of this section and § 2808.5 of this title. This determination is a final decision for purposes of appeal under § 2804.1 of this title. Where an appeal is filed, actions pending decision on appeal shall be in accordance with § 2808.6 of this title.

§ 2808.3-2 Periodic advance payments.

(a) The authorized officer may periodically estimate the reasonable costs expected to be incurred by the United States for specific work periods in processing an application determined to be in Category V or monitoring the right-of-way grant or temporary use permit under the provisions of § 2808.3-1 (e) through (f) of this title and shall notify the applicant of the estimated amount to be reimbursed for the period and the applicant shall make payment of such estimated reimbursable costs prior to the incurring of such costs by the United States.

(b) If the payments required by paragraph (a) of this section exceed the actual costs incurred by the United States, the authorized officer shall adjust the next billing to reflect the overpayment, or make a refund from applicable funds under the authority of

43 U.S.C. 1734. An applicant shall not set off or otherwise deduct any debt due it or any sum claimed to be owed it by the United States without the prior written approval of the authorized officer.

(c) The authorized officer may re-estimate the actual costs determined under § 2808.3–1 (e) through (g) of this title at any time it is determined that a change warranting a re-estimate occurs. An appeal of a re-estimate shall be treated in the same manner as an original estimate made under § 2808.3–1(e) of this title.

(d) Before issuance of a right-of-way grant or temporary use permit, an applicant shall pay such additional amounts as are necessary to reimburse the United States in full for any costs incurred, but not yet paid under § 2808.3–1(h) of this title.

§ 2808.3–3 Costs incurred for a withdrawn or denied application.

(a) An applicant whose application is denied is liable for any costs incurred by the United States in processing the application. Those amounts that have not been paid are due within 30 days of the receipt of a bill from the authorized officer identifying the amount due.

(b) An applicant who withdraws an application before a grant or temporary use permit is issued is liable for all costs incurred by the United States in processing the application up to the date the authorized officer receives the written notice of withdrawal, and for costs subsequently incurred in terminating the processing of said application. Those amounts that have not been paid are due within 30 days of receipt of a bill from the authorized officer identifying the amount due.

§ 2808.3–4 Joint liability for payments.

(a) When 2 or more applications for a right-of-way grant are filed which the authorized officer determines to be in competition with each other, each applicant shall reimburse the United States as required by § 2808.3 of this title, subject however, to the provisions of § 2808.1(b) of this title. Each applicant shall be responsible for the reimbursement of the reasonable costs identified with his/her application. Costs that are not readily identifiable with either of the applications, such as costs for portions of an environmental impact statement that relate to all of the applications, generally, shall be paid by each applicant in equal shares or such other proportion as may be agreed to in writing by the applicants and the authorized officer prior to the United States incurring such costs.

(b) When, through partnership, joint venture or other business arrangements, more than 1 person, partnership, corporation, association or other entity apply together for a right-of-way grant or temporary use permit, each such applicant shall be jointly and severally liable for costs under § 2808.3 of this title for the entire system, subject however, to the provision of § 2808.1(b) of this title.

§ 2808.4 Reimbursement of costs for monitoring.

(a) A holder of a right-of-way grant or temporary use permit for which a fee was assessed under § 2808.3 of this title shall, prior to the United States incurring such costs, reimburse the United States for costs to be incurred by the United States in monitoring the construction, operation, maintenance and termination of authorized facilities on the right-of-way grant or temporary use permit area, and for protection and rehabilitation of the lands involved, under the following schedule:

(1) The same category as determined under § 2802.2–2 of this title for processing of an application for a right-of-way grant or temporary use permit shall be used for monitoring. The one-time fee for monitoring a right-of-way grant or temporary use permit determined to be in Categories I through IV is as follows:

Category	Fee
I	$50
II	75
III	100
IV	200

[1] Shall be included with costs determined under § 2808.3.

(2) The monitoring fee for a right-of-way grant or temporary use permit determined to be in Category V shall be included with the costs determined under §§ 2808.3–1 through 2808.3–4 of this title.

(b) The holder shall submit the payment for the cost of monitoring required by paragraph (a)(1) of this section or the first periodic advance payment required under § 2808.3–2 of this title, as appropriate, along with the written acceptance of the terms and conditions of the grant or permit. No right-of-way grant or temporary use permit shall be issued until the required payment is made.

§ 2808.5 Other cost considerations.

(a) The State Director, after consultation with an applicant or holder making a request for a reduction or waiver of reimbursable costs under § 2808.3–1 of this title, may reduce or waive reimbursement required under §§ 2808.3–1 through 2808.3–4 of this title. In reaching a decision, the State Director may require the applicant/holder to submit in writing any information or data in addition to that required by § 2808.3–1(c) of this title that he/she determines to be needed to support a proposed finding that an application, grant or temporary use permit qualifies for a reduction or waiver of cost reimbursement. Action on a Category V application shall be suspended pending the State Director's decision.

(b) The State Director may base the decision to reduce or waive reimbursable costs on any of the following factors:

(1) The applicant's/holder's financial condition is such that payment of the fee would result in undue financial hardship;

(2) The application processing or grant monitoring costs are determined to be grossly excessive in relation to the costs of constructing the facilities or project requiring the right-of-way grant or temporary use permit on the public lands;

(3) A major portion of the application processing or grant monitoring costs are the result of issues not related to the actual right-of-way grant or temporary use permit;

(4) The applicant/holder is a nonprofit organization, corporation or association which is not controlled by or a subsidiary of a profitmaking enterprise;

(5) The studies undertaken in connection with the processing of the application have a public benefit;

(6) The facility or project requiring the right-of-way grant will provide a special service to the public or to a program of the Secretary;

(7) A right-of-way grant is needed to construct a facility to prevent or mitigate damages to any lands or improvements or mitigate hazards or danger to public health and safety resulting from an Act of God, an act of war or negligence of the United States;

(8) The holder of a valid existing right-of-way grant is required to secure a new right-of-way grant in order to relocate facilities which are required to be moved because the lands are needed for a Federal or federally funded project, if such relocation is not funded by the United States;

(9) Relocation of a facility on a valid existing right-of-way grant requires a new or amended right-of-way grant in order to comply with the law, regulations or standards of public health and safety and environmental protection which were not in effect at the time the original right-of-way grant or temporary use permit was issued; or

(10) It is demonstrated that because of compelling public benefits or public

services provided, or for other causes, collection of reimbursable costs by the United States for processing an application, for a grant or permit would be inconsistent with prudent and appropriate management of the public lands and the equitable interest of the applicant/holder or of the United States.

(c) The State Director may consider a reduction or waiver of fees under this section in determining reimbursable costs made under § 2808.3 of this title. Said determination is a final decision for purposes of appeal under § 2804.1 of this title. Where an appeal is filed, actions pending decision on appeal shall be in accordance with § 2808.6 of this title.

(d) Notwithstanding a finding by the State Director that there is a basis for reduction of the costs required to be reimbursed under this subpart, the State Director may not reduce such costs if funds to process the application(s) or to monitor the grant(s) or permit(s) are not otherwise available or may delay such decision pending the availability of funds.

§ 2808.6 Action pending decision on appeal.

(a) Where an appeal is filed on an application determined under § 2808.2–2(a) of this title to be in Categories I through IV, an application shall not be accepted for processing without payment of the fee for such application according to the category determined by the authorized officer; however, when payment is made, the application may be processed and, if proper, the grant or temporary use permit issued. The authorized officer shall make any refund or other adjustment directed as a result of an appeal.

(b) Where an appeal is filed for an application determined under § 2808.2–2(a) of this title to be in Category V or for a related cost reimbursement determination under § 2808.3–1 (e) through (g) or § 2808.5(d) of this title, processing of the application shall be suspended pending the outcome of the appeal.

J. Steven Griles,

Assistant Secretary of the Interior.

April 30, 1987.

[FR Doc. 87–15483 Filed 7–7–87; 8:45 am]

Corrections

Federal Register
Vol. 52, No. 176
Friday, September 11, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 87-006]

Cattle From Canada

Correction

In proposed rule document 87-19759 beginning on page 32561 in the issue of Friday, August 28, 1987, make the following correction:

On page 32562, in the first column, in the fifth line from the bottom, "expected" should read "exported".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51688; FRL-3247-4]

Certain Chemicals Premanufacture Notices

Correction

In notice document 87-18490 beginning on page 30431 in the issue of Friday, August 14, 1987, make the following corrections:

1. On page 30431—

a. In the first column, under **DATES**, in the fifth line, "87,1519" should read "87-1519".

b. In the same column, in the fifth line from the bottom, "87,1529" should read "87-1529".

c. In the second column under P 87-1511, in the second line, "*Substance.* (g)", should read "*Substance.* (G)".

d. In the third column, in the first line, "*Use/Import.* (g)", should read "*Use/Import.* (G)".

e. In the same column, under P 87-1513, in the third line, "*Chemical.* (s)" should read "*Chemical.* (S)".

f. And in the same column, the 17th line from the bottom should read, P 87-1517.

2. On page 30432—

a. In the first column, the third line from the bottom should read, "(5-hexenylthio).".

b. In the second column, under P 87-1530, in the fifth and ninth lines, "disulfo" was misspelled.

c. In the third column, under P 87-1534, in the second line, "*Chemical.*", should read "*Chemical.* (G)".

3. On page 30433, in the first column, under P 87-1540, in the seventh line "bis-,m", should read "bis-,".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 78-2830]

Dental Devices; General Provisions and Classifications of 110 Devices

Correction

In rule document 87-18265 beginning on page 30082 in the issue of Wednesday, August 12, 1987, make the following corrections:

1. On page 30084, in the table, in the entry for "872.3600", the Docket No. should read "78N-2886".

2. On page 30086, in the table—

a. The fourth entry under "Device" should read, "Dental electrosurgical unit and accessories".

b. In the fifth line, in the heading for "Subpart F", "Therapeutic" was misspelled.

3. On page 30088, in the third column, in the table—

a. In the entry for "872.3490", in the right hand column, in the third paragraph, in the second line, "salt car-" should read "salt and car-".

b. In the entry for "872.4565", in the right hand column, the last line should read "No. 78N-2945).".

c. In the entry for "872.5410", in the right hand column, the first entry should read "Orthodontic appliances and accessories.".

4. On page 30096—

a. In the second column, in the table, in the right hand column, in the 12th line, "January 26, 1972" should read "January 26, 1982".

b. In the third column, in the second complete paragraph, in the fifth line, "any detection" should read "any caries detection".

§ 872.3680 [Corrected]

5. On page 30102, in the second column, in § 872.3680(a), in the seventh line, "cost" should read "coat".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2800

[Circular No. 2596; AA-330-07-4211-02-NCPF-2410]

Rights-of-Way, Principles and Procedures; Recovery of Costs

Correction

In rule document 87-15483 beginning on page 25802 in the issue of Wednesday, July 8, 1987, make the following corrections:

1. On page 25808, in the second column, in the table of contents of Subpart 2808, in the entry for § 2808.3-3, "withdraws" should read "withdrawn".

§ 2808.1 [Corrected]

2. On the same page, in the same column, in § 2808.1(b), in the first line, "the subpart" should read "this subpart".

§ 2808.5 [Corrected]

3. On page 25810, in § 2808.5, in the third column, in paragraph (c), in the ninth line, "§ 2808.8" should read "§ 2808.6".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-07-4212-12; A-22448]

Realty Action; Reconveyed Land; Mohave County, AZ

Correction

In notice document 87-19912 beginning on page 32849 in the issue of Monday, August 31, 1987, make the following corrections:

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3430

[Circular No. 2597; AA-650-07-4121-02-2410]

Noncompetitive Leases; Detailed Procedures for Processing Preference Right Lease Applications for Coal

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act (30 U.S.C. 521–531), the Federal Coal Leasing Amendments Act of 1976, as supplemented (90 Stat. 1083–1092), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), Part 3430, Group 3400, Subchapter C, Chapter II of the Code of Federal Regulations is amended as set forth below.

PART 3430—[AMENDED]

1. The authority citation for Part 3430 continues to read:

Authority: 30 U.S.C. 181 *et seq.;* 30 U.S.C. 521–531; 30 U.S.C. 351–359; 30 U.S.C. 1201 *et seq.;* 42 U.S.C. 7101 *et seq.;* and 43 U.S.C. 1701 *et seq.*

§ 3430.3–1 [Amended]

2. Section 3430.3–1(a) is amended by removing from where it appears at the end thereof the phrase "by December 1, 1984".

3. Section 3430.3–2 is amended by adding new paragraph (c) to read:

§ 3430.3–2 Environmental analysis.

* * * * *

(c) Except for the coal preference right lease applications analyzed in the *San Juan Regional Coal Environmental Impact Statement* (March 1984), the *Savery Coal EIS* (July 1983), and the *Final Decision Record and Environmental Assessment of Coal PRLAs (Beans Spring, Table, and Black Butte Creek Projects)* (September 1982), or covered by serial numbers C–0127832, C–0123475, C–0126669, C–8424, C–8425, W–234111, C–0127834, U–1362, NM–3099, F–014996, F–029746, and F–033619, the authorized officer shall prepare environmental impact statements for all preference right lease applications for coal for which he/she proposes to issue a lease, in accordance with the following procedures:

(1) The authorized officer shall prepare adequate environmental impact statements and other National Environmental Policy Act documentation, prior to the determination that commercial quantities of coal have been discovered on the lands subject to a preference right lease application, in order to assure, *inter alia*, that the full cost of environmental impact mitigation, including site-specific lease stipulations, is included in the commercial quantities determination for that preference right lease application.

(2) The authorized officer shall prepare and evaluate alternatives that will explore various means to eliminate or mitigate the adverse impacts of the proposed action. The impact analysis shall address each numbered subject area set forth in § 3430.4–4 of this title, except that the impact analysis need not specifically address the subject areas of Mine Planning or of Bonding. At a minimum, each environmental impact statement shall include:

(i) A "no action" alternative that examines the impacts of the projected development without the issuance of leases for the preference right lease applications;

(ii) An alternative setting forth the applicant's proposed action. This alternative shall examine the applicant's proposal, based on information submitted in the applicant's initial showing and standard lease stipulations;

(iii) An alternative setting forth the authorized officer's own proposed action. This alternative shall examine:

(A) The impacts of mining on those areas encompassed by the applicant's proposal that are found suitable for further consideration for mining after the unsuitability review provided for by Subpart 3461 of this title; and

(B) The impacts of mining subject to appropriate special stipulations designed to mitigate or eliminate impacts for which standard lease stipulations may be inadequate. With respect to mitigation of significant adverse impacts, alternative lease stipulations shall be developed and preferred lease stipulations shall be identified and justified. The authorized officer shall state a preference between standard lease stipulations and special stipulations (performance standards or design criteria).

(iv) An exchange alternative, examining any reasonable alternative for exchange that the Secretary would consider were the applicant to show commercial quantities, and, in cases where, if the lands were to be leased, there is a finding that the development of the coal resources is not in the public interest.

(v) An alternative exploring the options of withdrawal and just compensation and examining the possibility of Secretarial withdrawal of lands covered by a preference right lease application (assuming commercial quantities will be shown) while the Secretary seeks congressional authorization for purchase or condemnation of the applicant's property, lease or other rights.

(3) The authorized officer shall prepare a cumulative impact analysis in accordance with 40 CFR 1508.7 and 1508.25 that examines the impacts of the proposed action and the alternatives when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or nonfederal) or person undertakes such other actions.

Published in 52 F.R. 25794, July 8, 1987 - Effective August 7, 1987

(i) The cumulative impact analysis shall include an analysis of the combined impacts of the proposed preference right leasing with the mining of currently leased coal and other reasonably foreseeable future coal development, as well as other preference right leasing in the area under examination.

(ii) The cumulative impact analysis shall also examine the impacts of the proposed preference right leasing in conjunction with impacts from non-coal activities, such as mining for other minerals, other projects requiring substantial quantities of water, and other sources of air pollution.

(4) When information is inadequate to estimate impacts reasonably, the authorized officer shall comply with the provisions of 40 CFR 1502.22(b).

(5) Each environmental impact statement shall be prepared in accordance with the Council of Environmental Quality's National Environmental Policy Act regulations, 40 CFR Part 1500.

§ 3430.4–1 [Amended]

3. Section 3430.4–1 is amended by:

A. Renumbering paragraphs (c), (d) and (e) as paragraphs (d), (e) and (f), respectively;

B. Adding a new paragraph (c) to read:

(c) The authorized officer shall process all preference right lease applications, except for those preference right lease applications numbered F–029746 and F–033619, in accordance with the following standards and procedures:

(1) The authorized officer shall transmit a request for final showing to each applicant for each preference right lease application for which it proposes to issue a lease.

(2) Copies of each request shall be sent to all interested parties.

(3) The request shall contain proposed lease terms and special stipulations;

C. Amending the renumbered paragraph (d)(2), formerly paragraph (c)(2), by removing from where it appears at the beginning of the paragraph the word "The" and replacing it with the phrase "The proposed means of meeting the proposed lease terms and special conditions and the"; and

D. Adding a new paragraph (g) to read:

(g) All data submitted by the preference right lease applicant that is labeled as privileged or confidential shall be treated in accordance with the provisions of Part 2 of this title.

4. A new § 3430.4–3 is added to read:

§ 3430.4–3 Costing document and public review.

(a) The authorized officer shall prepare a document that estimates the cost of compliance with all laws, regulations, lease terms, and special stipulations intended to protect the environment and mitigate the adverse environmental impacts of mining.

(1) The costs shall be calculated for each of the various numbered subject areas contained in § 3430.4–4 of this title.

(2) The authorized officer's estimated costs of compliance may be stated in ranges based on the best available information. If a range is used, he/she shall identify the number from each range that the authorized officer proposes to use in making the determination whether a particular applicant has identified coal in commercial quantities.

(b) The authorized officer shall provide for public review of the costs of environmental protection associated with the proposed mining on the preference right lease application area.

(1) The authorized officer shall send the Bureau's cost estimate document to the preference right lease applicant and provide at least 30 days for the applicant to review said document before a notice of availability is published in the **Federal Register**. Comments submitted by the applicant, and the Bureau's response to the comments, shall be made available to the public for review and comment at the time the cost estimate document is made available.

(2) The authorized officer then shall publish in the **Federal Register** a notice of the availability of the Bureau's cost estimation document.

(3) The authorized officer also shall send the cost estimation document to all interested parties, including all agencies, organizations, and individuals that participated in the environmental impact statement or the scoping process.

(4) Copies of the cost estimation document shall be submitted to the Environmental Protection Agency.

(5) The public shall be given a period of not less than 60 days from the date of the publication of the notice in the **Federal Register** to comment on the Bureau's cost estimates.

(c) The cost estimate document and all substantive comments received (or summaries thereof if the response is voluminous) shall be part of the Record of Decision for the preference right lease application(s) (See 40 CFR 1505.2).

(1) The authorized officer shall respond to each substantive comment in the Record of Decision by modifying or supplementing his/her cost estimates, or explaining why they were not modified or supplemented in response to the comments.

(2) The authorized officer shall submit a copy of the Record of Decision with the public comments and the Bureau's response to the Environmental Protection Agency.

(3) The authorized officer shall publish a notice of the availability of each Record of Decision in the **Federal Register**.

(4) No preference right lease shall be issued sooner than 30 days following publication of the notice of availability required by paragraph (c)(3) of this section.

5. A new § 3430.4–4 is added to read:

§ 3430.4–4 Environmental costs.

Prior to determining that a preference right lease applicant has discovered coal in commercial quantities, the authorized officer shall include the following listed and any other relevent environmental costs in the adjudication of commercial quantities (examples may not apply in all cases, neither are they all inclusive):

(a) Permitting.

(1) Surface water—cost of collecting and analyzing baseline data on surface water quality and quantity (collecting and analyzing samples, constructing and maintaining monitoring facilities, purchasing equipment needed for surface water monitoring).

(2) Groundwater—costs of collecting and analyzing baseline data on groundwater quality and quantity (collecting and evaluating samples from domestic or test wells, purchasing well casings and screens and monitoring equipment, drilling and maintenance of test wells).

(3) Air quality—costs of collecting and analyzing baseline air quality data (purchasing rain, air direction, and wind guages and air samplers and evaporation pans).

(4) Vegetation—costs of collecting and analyzing data on indigenous vegetation (collecting and classifying samples for productivity analyses).

(5) Wildlife—costs of collecting and analyzing baseline data on wildlife species and habitats (collecting wildlife and specimens and data and purchasing traps and nets).

(6) Soils—costs of collecting and analyzing baseline soil data (collecting and analyzing soil samples by physical and chemical means).

(7) Noise—costs of collecting and analyzing baseline data on noise (purchasing necessary equipment).

(8) Socio-economics—costs of conducting social and economic studies

for baseline data (collecting and evaluating social and economic data).

(9) Archaeology, history, and other cultural resources—costs of collecting and analyzing data on archaeology, history, and other cultural resources (conducting archaelogical excavations and historical and cultural surveys).

(10) Paleontology—costs of collecting and analyzing paleontological data (conducting surveys and excavations).

(11) Geology—costs of collecting and analyzing baseline geological data (drilling overburden cores and conducting physical and chemical analyses).

(12) Subsidence—costs of collecting and analyzing data on subsidence (setting monuments to measure subsidence).

(13) Mine planning—costs of developing mine permit application package (development of operating, blasting, air and water pollution control, fish and wildlife, and reclamation plans).

(b) Mining—environmental mitigation required by law or proposed to be imposed by the authorized officer.

(1) Surface water protection—costs of mitigating the impacts of mining on the quantity of surface water (purchasing relacement water and transporting it) and on the quality of surface water (construction sedimentation ponds, neutralization facilities, and diversion ditches).

(2) Groundwater protection—costs of mitigating the impacts of mining on the quantity of groundwater (replacing diminished supplies or water rendered unfit for its prior use(s)) and on the quality of groundwater (treating pumped mine water, compensating for damage to water rights, sealing sedimentation ponds).

(3) Air pollution control—costs of mitigating the impacts of mining on air quality (compliance with National Ambient Air Quality Standard and Protection from Significant Deterioration requirements using water and chemical sprays for dust control, installing and operating dust and other pollution collections).

(4) Noise abatement—costs of mitigating the impacts of mining on noise levels in mining area (installing and maintaining noise mufflers on equipment and around the mine site).

(5) Wildlife—costs of mitigating impacts to wildlife species identified as reasonably likely to occur and subject to proposed lease stipulations, and including costs of compliance with the Endangered Species Act and other laws, regulations, and treaties concerning wildlife protection.

(6) Socio-economics—costs of implementing any mitigation measure the Bureau or any other government agency has imposed; and of mitigating impacts on surface owners and occupants, including relocation costs and costs of compensation for improvements, crops, or grazing values.

(7) Archaeology, history, and other cultural—costs of monitoring and inspection during mining to identify archaeological, historical, and other cultural resources, and costs of mitigating impacts to these resources identified as reasonably likely to occur and subject to proposed lease stipulations.

(8) Paleontological—costs of monitoring and inspection during mining to identify paleontological resources and costs of mitigating impacts to these resources identified as reasonably likely to occur and subject to proposed lease stipulations.

(9) Subsidence—costs of mitigating the impacts of subsidence identified as reasonably likely to occur and subject to proposed lease stipulations.

(10) Monitoring—costs of purchasing and maintaining facilities, equipment, and personnel to accomplish monitoring required as a permit condition or lease stipulation, or by law or regulation.

(c) Reclamation.

(1) Topsoil removal and replacement—costs of reclaiming soil by stockpiling or continuous methods (removing and stockpiling and replacing topsoil, protecting the stockpile, if necessary, from erosion and compacting).

(2) Subsoil removal and replacement—costs of reclaiming subsoil by stockpiling or continuous method (removing and stockpiling and replacing subsoil, protecting the stockpile, if necessary, from erosion and compacting).

(3) Site restoration—costs of removing structures necessary to mining operations but not part of original land features (sedimentation ponds, roads, and buildings).

(4) Grading—costs of grading soil banks to their approximate original contour before replacing topsoil and subsoil, if applicable, and revegetating the affected area.

(5) Revegetation—costs of restoring vegetative cover to the affected area after grading and replacement of topsoil and subsoil, if applicable (liming, planting, irrigating, fertilizing, cultivating, and reworking, if first efforts are unsuccessful).

(6) Bonds—costs of bonds required by Federal, State and local governments.

§ 3430.5-1 [Amended]

5. Section 3430.5-1 is amended by:

A. Amending paragraph (a)(2) by removing from where it appears therein the citation "§ 3430.2-3" and replacing it with the citation "§ 3430.3-2"; and

B. Adding a new paragraph (c) to read:

(c) The authorized officer may reject any preference right lease application that clearly cannot satisfy the commercial quantities test without preparing additional National Environmental Policy Act documentation and/or a cost estimate document as described in §§ 3430.3-2, 3430.4-3 and 3430.4-4 of this title. The following procedures apply to rejecting these preference right lease applications:

(1) When an applicant clearly fails to meet the commercial quantities test as provided in this part, the authorized officer may notify the applicant:

(i) That its preference right lease application will be rejected;

(ii) Of the reasons for the proposed rejection;

(iii) That the applicant has 60 days in which to provide additional information as to why its preference right lease application should not be rejected; and

(iv) Of the type, quantity, and quality of additional information needed for reconsideration.

(2) If, after the expiration of the 60-day period, the authorized officer has no basis on which to change his/her decision, the authorized officer shall reject the preference right lease application.

(3) If the authorized officer reconsiders and changes the decision to reject the preference right lease application, he/she shall continue to adjudicate the preference right lease application in accordance with §§ 3430.3-2, 3430.4-3, and 3430.4-4 of this title.

J. Steven Griles,

Assistant Secretary of the Interior

June 11, 1987.

[FR Doc. 87-15484 Filed 7-7-87; 8:45 am]

ubchapter I Definitions

TABLE 52.2381—EPA-APPROVED REGULATIONS

State citation, title and subject	Date adopted by State	Date approved by EPA	Federal Register Citation	Section 52.2370	Comments and unapproved sections
Section 5-101 Definitions					
* * *	*	*	*	*	*
	9/17/86	7/17/87	[FR citation from published date].	(c)(19)	Related to visibility in Class I areas. 5-101(3), (14), (21), (59), and (76) approved.
* * *	*	*	*	*	*
Subchapter V—Review of New Air Contaminant Sources					
Section 5-501 Review of construction or modification of air contaminant sources.					
* * *	*	*	*	*	*
	9/17/86	7/17/87	[FR citation from published date].	(c)(19)	Related to visibility in Class I areas. 5-501(4) approved.
* * *	*	*	*	*	*
Section 5-502 Major stationary sources and major modifications.					
* * *	*	*	*	*	*
	9/17/86	7/17/87	[FR citation from published date].	(c)(19)	Related to visibility in Class I areas. 5-502 (4)(d) and (4)(e) approved.
* * *	*	*	*	*	*

[FR Doc. 87-15671 Filed 7-16-87; 8:45 am]

BILLING CODE 6560-50-M

List of Subjects in 40 CFR Part 799

Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: July 7, 1987.

J. Merenda,

Director, Existing Chemical Assessment Division.

[FR Doc. 87-16186 Filed 7-16-87; 8:45 am]

BILLING CODE 6560-50-M

0 CFR Part 799

OPTS-42002F; FRL-3233-8]

roalkenes; Final Test Rule ction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final test rule on fluoroalkenes published in the Federal Register of June 8, 1987. This action is necessary to insert an inadvertently omitted page in the preamble.

FOR FURTHER INFORMATION CONTACT: By mail: John A. Richards, Chief, Federal Register Staff (TS-788B), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. G-009A, 401 M St. SW., (202-382-3415).

SUPPLEMENTARY INFORMATION: EPA issued a final rule, FR Doc. 87-12828, published in the Federal Register of June 8, 1987 (52 FR 21516), to require certain health effects testing for vinyl fluoride (VF; CAS No. 75-02-5), vinylidene fluoride (VDF; CAS No. 75-38-7), hexafluoropropene (HFP; CAS No. 116-15-4), and tetrafluoroethene (TFE; CAS No. 116-14-3) (collectively as roalkenes), in accordance with on 4(a)(1) of the Toxic Substances trol Act.

In unit V.A., a page of the preamble was inadvertently omitted and is corrected by inserting the material in the following text between the words "letters" and "II", appearing at page 21525, third column, fourth line.

* * * * *

* * * Federal Register notice will be issued after the review, either affirming or proposing to rescind the Agency's oncogenicity requirement for TFE.

To assess the potential for the fluoroalkenes to cause gene mutations, the Agency had proposed mutagenicity testing in the *Salmonella* reverse mutation assay for TFE. EPA now has adequate data on TFE in this test as discussed in Unit II.B., and is, therefore, withdrawing its proposed requirement for the *Salmonella* assay for TFE. EPA is, however, requiring that mutagenicity testing for cells in culture be conducted for both TFE and HFP on subclones of CHO cells as specified in § 798.5300 and as modified in § 799.1700(c)(1)(i)(B)(*2*). However, as discussed in Unit II.B., the requirement for testing TFE in the cells in culture assay does not extend to the "without activation" portion of that test. All other requirements apply. If the cells in culture test is positive for TFE or HFP, then a *Drosophila* sex-linked recessive lethal (SLRL) assay shall be conducted as specified in § 798.5275 and as modified in § 799.1700(c)(1)(i)(C)(*2*) for that chemical. If the cells in the culture test is negative then no further gene mutation testing will be required for that chemical. Based on positive results from the testing of VDF in the *Salmonella* assay, as discussed in the proposed rule, and the positive cells in culture assay for VF, as discussed in Unit * * *

* * * * *

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2598; AA-230-07-6310-02]

43 CFR Part 5440

Conduct of Sales; Qualification of Bidders

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the provision of the existing regulations in 43 CFR Part 5440, Conduct of Sales, dealing with qualifications of bidders. The Department of the Interior has determined that it is necessary to amend the existing regulations concerning qualifications of bidders by defining more precisely when bidders are not qualified, and by making these amendments apply retroactively to all cases still pending before the Department.

EFFECTIVE DATE: August 17, 1987.

ADDRESS: Any suggestions or inquiries should be sent to: Director (140), Department of the Interior, Bureau of Land Management, Room 5555 MIB, 1800 'C' Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gary Ryan (202) 653-8864.

SUPPLEMENTARY INFORMATION: A proposed rulemaking to amend provisions of the existing regulations in 43 CFR Part 5400, Sale of Forest Products; General, and Part 5440, Conduct of Sales, was published in the Federal Register on July 18, 1985 (50 FR 29324). The proposed rulemaking provided the public a comment period of 60 days. A 30 day extension was granted on September 26, 1985 (50 FR 39024). The Department of the Interior received 2 comments from the public. The letters were from a timber association and a law firm. Because of the length of time that has passed since publication of the proposed rulemaking, the Department has decided to repropose the rulemaking, with a further opportunity

for public comment. This reproposal will be published in the Federal Register shortly. However, because the Department has determined that § 5441.1(c) of the current regulations does not sufficiently provide for due process, this section is revised today in this final rulemaking, effective August 17, 1987 and applies retroactively to all cases still pending before the Department, taking into account comments received on the July 18, 1985, rulemaking. Section 5441.1(c) and a discussion of comments received on it will also be included in the reproposed rulemaking amending Parts 5400 and 5440.

Legal analysis within the Department has led to the conclusion that the current § 5441.1(c) violates the constitutional due process requirement by imposing a penalty arbitrarily and without providing the affected party an opportunity to be heard and present mitigating facts. The Bureau of Land Management has been reluctant to enforce the current regulation, and has been advised by the Office of the Solicitor that enforcement would likely result in prejudicial litigation for violation of due process.

During recent months, other interested parties have challenged this failure to enforce § 5441.1(c) by appealing several timber sales in Oregon, even when parties that have defaulted on earlier contracts were not present during the sale. The result has been that numerous contracts have not been awarded, and remain suspended until the debarment issues are resolved. Therefore, to avoid significant economic hardship to the timber industry generally in the northwestern United States caused by this delay, to resolve fairly and equitably the interests of competing entities and balance its effects on them, this rulemaking will be applied retroactively to all cases still pending before the Department of the Interior when it becomes effective, as well as to cases arising subsequently. It must be emphasized that although the current § 5441.1(c) has been in effect since 1982, not until the past few months has there been occasion to apply it. This rulemaking cures a deficiency in the current regulations, and does so equitably. Although a defaulting company may be allowed to bid at sales, if such company is declared the high bidder the contract will not be awarded until a final decision on debarment is made.

The Department of the Interior, through the Bureau of Land Management (BLM), currently provides in 43 CFR 5441.1(c) that a person who has defaulted under a contract to purchase timber from the agency may not bid on any subsequent timber purchase contract. In the July 18, 1985, proposed rulemaking, the Department provided the authorized officer with discretion not to debar one who has defaulted. In the rulemaking to be reproposed, this provision will be further amended and expanded in a separate § 5441.1–4 on procedures for debarment. In response to a comment on the July 18, 1985, proposed rulemaking, § 5441.1(c) has been replaced with a new paragraph (c) provided that debarred purchasers are prohibited from bidding on timber purchase contracts, but that purchasers being considered for debarment may continue to bid although contracts would not be awarded until final debarment determination. Purchasers who have defaulted but are not being considered for debarment may continue to bid and be awarded contracts in accordance with Subpart 5450.

This new § 5441.1(c) is an integral part of the provisions in the rulemaking on debarment that will be reproposed, and in fact will be included in that reproposed rulemaking. The Department has ruled that the existing § 5441.1(c) is illegal because it does not provide for due process. Therefore, although the new provision may not appear to function properly standing alone, it is necessary to publish it as a substitute provision immediately in the form of a final rulemaking in order to remove and replace the present provision. Public comments received on the reproposed rulemaking that address the issue of whether debarment candidates should continue to bid on contracts will be considered, and further changes may be made in this provision in the subsequent final rulemaking.

The principal author of this final rulemaking is Gary Ryan, Division of Forestry, assisted by the staff of the Division of Legislation and Regulatory Management.

It is hereby determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Its effect is the same regardless of the size of the regulated entity, and will not be greater than $100,000,000 annually on the national economy.

The rulemaking does not contain information collection requirements which require approval by the Office of Management and Budget under 5 CFR 1320.7 *et seq.*

List of Subjects in 43 CFR Part 5440

Forest and forest products, Government contracts, Public lands.

Under the authority of section 5 of the Act of August 28, 1937 (43 U.S.C. 1181e), and the Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*), Subchapter E, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

April 30, 1987.

James E. Cason,

Deputy Assistant Secretary of the Interior.

PART 5440—[AMENDED]

1. The authority citation for Part 5440 continues to read as follows:

Authority: Sec. 5, 50 Stat. 875, 61 Stat. 631, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 *et seq.*

2. Section 5441.1(c) is revised to read as follows:

§ 5441.1 Qualification of bidders.

* * * * *

(c)(1) A purchaser who is under review for debarment may continue to bid on timber purchase contracts until a final debarment determination has been made by the debarring official. However, contracts will not be awarded during the review period.

(2) Debarred purchasers are prohibited from bidding on timber purchase contracts.

[FR Doc. 87–16236 Filed 7–16–87; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations; New York et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect

Subchapter I Definitions

TABLE 52.2381—EPA-APPROVED REGULATIONS

State citation, title and subject	Date adopted by State	Date approved by EPA	Federal Register Citation	Section 52.2370	Comments and unapproved sections
Section 5-101 Definitions					
* * *	*	*	*	*	*
	9/17/86	7/17/87	[FR citation from published date].	(c)(19)	Related to visibility in Class I areas. 5-101(3), (14), (21), (59), and (76) approved.
* * *	*	*	*	*	*
Subchapter V—Review of New Air Contaminant Sources					
Section 5-501 Review of construction or modification of air contaminant sources.					
* * *	*	*	*	*	*
	9/17/86	7/17/87	[FR citation from published date].	(c)(19)	Related to visibility in Class I areas. 5-501(4) approved.
* * *	*	*	*	*	*
Section 5-502 Major stationary sources and major modifications.					
* * *	*	*	*	*	*
	9/17/86	7/17/87	[FR citation from published date].	(c)(19)	Related to visibility in Class I areas. 5-502 (4)(d) and (4)(e) approved.
* * *	*	*	*	*	*

[FR Doc. 87-15671 Filed 7-16-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42002F; FRL-3233-8]

Fluoroalkenes; Final Test Rule Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final test rule on fluoroalkenes published in the Federal Register of June 8, 1987. This action is necessary to insert an inadvertently omitted page in the preamble.

FOR FURTHER INFORMATION CONTACT: By mail: John A. Richards, Chief, Federal Register Staff (TS-788B), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. G-009A, 401 M St. SW., (202-382-3415).

SUPPLEMENTARY INFORMATION: EPA issued a final rule, FR Doc. 87-12828, published in the Federal Register of June 8, 1987 (52 FR 21516), to require certain health effects testing for vinyl fluoride (VF; CAS No. 75-02-5), vinylidene fluoride (VDF; CAS No. 75-38-7), hexafluoropropene (HFP; CAS No. 116-15-4), and tetrafluoroethene (TFE; CAS No. 116-14-3) (collectively as fluoroalkenes), in accordance with section 4(a)(1) of the Toxic Substances Control Act.

In unit V.A., a page of the preamble was inadvertently omitted and is corrected by inserting the material in the following text between the words "letters" and "II", appearing at page 21525, third column, fourth line.

* * * * *

* * * Federal Register notice will be issued after the review, either affirming or proposing to rescind the Agency's oncogenicity requirement for TFE.

To assess the potential for the fluoroalkenes to cause gene mutations, the Agency had proposed mutagenicity testing in the *Salmonella* reverse mutation assay for TFE. EPA now has adequate data on TFE in this test as discussed in Unit II.B., and is, therefore, withdrawing its proposed requirement for the *Salmonella* assay for TFE. EPA is, however, requiring that mutagenicity testing for cells in culture be conducted for both TFE and HFP on subclones of CHO cells as specified in § 798.5300 and as modified in § 799.1700(c)(1)(i)(B)(*2*). However, as discussed in Unit II.B., the requirement for testing TFE in the cells in culture assay does not extend to the "without activation" portion of that test. All other requirements apply. If the cells in culture test is positive for TFE or HFP, then a *Drosophila* sex-linked recessive lethal (SLRL) assay shall be conducted as specified in § 798.5275 and as modified in § 799.1700(c)(1)(i)(C)(*2*) for that chemical. If the cells in the culture test is negative then no further gene mutation testing will be required for that chemical. Based on positive results from the testing of VDF in the *Salmonella* assay, as discussed in the proposed rule, and the positive cells in culture assay for VF, as discussed in Unit * * *

* * * * *

List of Subjects in 40 CFR Part 799

Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: July 7, 1987.

J. Merenda,

Director, Existing Chemical Assessment Division.

[FR Doc. 87-16186 Filed 7-16-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2598; AA-230-07-6310-02]

43 CFR Part 5440

Conduct of Sales; Qualification of Bidders

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the provision of the existing regulations in 43 CFR Part 5440, Conduct of Sales, dealing with qualifications of bidders. The Department of the Interior has determined that it is necessary to amend the existing regulations concerning qualifications of bidders by defining more precisely when bidders are not qualified, and by making these amendments apply retroactively to all cases still pending before the Department.

EFFECTIVE DATE: August 17, 1987.

ADDRESS: Any suggestions or inquiries should be sent to: Director (140), Department of the Interior, Bureau of Land Management, Room 5555 MIB, 1800 'C' Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gary Ryan (202) 653-8864.

SUPPLEMENTARY INFORMATION: A proposed rulemaking to amend provisions of the existing regulations in 43 CFR Part 5400, Sale of Forest Products; General, and Part 5440, Conduct of Sales, was published in the Federal Register on July 18, 1985 (50 FR 29324). The proposed rulemaking provided the public a comment period of 60 days. A 30 day extension was granted on September 26, 1985 (50 FR 39024). The Department of the Interior received 2 comments from the public. The letters were from a timber association and a law firm. Because of the length of time that has passed since publication of the proposed rulemaking, the Department has decided to repropose the rulemaking, with a further opportunity

for public comment. This reproposal will be published in the Federal Register shortly. However, because the Department has determined that § 5441.1(c) of the current regulations does not sufficiently provide for due process, this section is revised today in this final rulemaking, effective August 17, 1987 and applies retroactively to all cases still pending before the Department, taking into account comments received on the July 18, 1985, rulemaking. Section 5441.1(c) and a discussion of comments received on it will also be included in the reproposed rulemaking amending Parts 5400 and 5440.

Legal analysis within the Department has led to the conclusion that the current § 5441.1(c) violates the constitutional due process requirement by imposing a penalty arbitrarily and without providing the affected party an opportunity to be heard and present mitigating facts. The Bureau of Land Management has been reluctant to enforce the current regulation, and has been advised by the Office of the Solicitor that enforcement would likely result in prejudicial litigation for violation of due process.

During recent months, other interested parties have challenged this failure to enforce § 5441.1(c) by appealing several timber sales in Oregon, even when parties that have defaulted on earlier contracts were not present during the sale. The result has been that numerous contracts have not been awarded, and remain suspended until the debarment issues are resolved. Therefore, to avoid significant economic hardship to the timber industry generally in the northwestern United States caused by this delay, to resolve fairly and equitably the interests of competing entities and balance its effects on them, this rulemaking will be applied retroactively to all cases still pending before the Department of the Interior when it becomes effective, as well as to cases arising subsequently. It must be emphasized that although the current § 5441.1(c) has been in effect since 1982, not until the past few months has there been occasion to apply it. This rulemaking cures a deficiency in the current regulations, and does so equitably. Although a defaulting company may be allowed to bid at sales, if such company is declared the high bidder the contract will not be awarded until a final decision on debarment is made.

The Department of the Interior, through the Bureau of Land Management (BLM), currently provides in 43 CFR 5441.1(c) that a person who has defaulted under a contract to purchase timber from the agency may not bid on any subsequent timber purchase contract. In the July 18, 1985, proposed rulemaking, the Department provided the authorized officer with discretion not to debar one who has defaulted. In the rulemaking to be reproposed, this provision will be further amended and expanded in a separate § 5441.1–4 on procedures for debarment. In response to a comment on the July 18, 1985, proposed rulemaking, § 5441.1(c) has been replaced with a new paragraph (c) provided that debarred purchasers are prohibited from bidding on timber purchase contracts, but that purchasers being considered for debarment may continue to bid although contracts would not be awarded until final debarment determination. Purchasers who have defaulted but are not being considered for debarment may continue to bid and be awarded contracts in accordance with Subpart 5450.

This new § 5441.1(c) is an integral part of the provisions in the rulemaking on debarment that will be reproposed, and in fact will be included in that reproposed rulemaking. The Department has ruled that the existing § 5441.1(c) is illegal because it does not provide for due process. Therefore, although the new provision may not appear to function properly standing alone, it is necessary to publish it as a substitute provision immediately in the form of a final rulemaking in order to remove and replace the present provision. Public comments received on the reproposed rulemaking that address the issue of whether debarment candidates should continue to bid on contracts will be considered, and further changes may be made in this provision in the subsequent final rulemaking.

The principal author of this final rulemaking is Gary Ryan, Division of Forestry, assisted by the staff of the Division of Legislation and Regulatory Management.

It is hereby determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Its effect is the same regardless of the size of the regulated entity, and will not be greater than $100,000,000 annually on the national economy.

The rulemaking does not contain information collection requirements which require approval by the Office of Management and Budget under 5 CFR 1320.7 *et seq.*

List of Subjects in 43 CFR Part 5440

Forest and forest products, Government contracts, Public lands.

Under the authority of section 5 of the Act of August 28, 1937 (43 U.S.C. 1181e), and the Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*), Subchapter E, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

April 30, 1987.

James E. Cason,

Deputy Assistant Secretary of the Interior.

PART 5440—[AMENDED]

1. The authority citation for Part 5440 continues to read as follows:

Authority: Sec. 5, 50 Stat. 875, 61 Stat. 631, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 *et seq.*

2. Section 5441.1(c) is revised to read as follows:

§ 5441.1 Qualification of bidders.

* * * * *

(c)(1) A purchaser who is under review for debarment may continue to bid on timber purchase contracts until a final debarment determination has been made by the debarring official. However, contracts will not be awarded during the review period.

(2) Debarred purchasers are prohibited from bidding on timber purchase contracts.

[FR Doc. 87–16236 Filed 7–16–87; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations; New York et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2599; AA-540-07-4111-02]

43 CFR Part 3190

Delegation of Authority, Cooperative Agreements, and Contracts for Oil and Gas Inspections by Non-Federal Employees

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 19, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), and the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*), Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended by adding a new Part 3190 as set forth below:

PART 3190—DELEGATION OF AUTHORITY, COOPERATIVE AGREEMENTS AND CONTRACTS FOR OIL AND GAS INSPECTION

Subpart 3190—Delegation of Authority, Cooperative Agreements and Contracts for Oil and Gas Inspections; General

Sec.
3190.0–1 Purpose.
3190.0–3 Authority.
3190.0–4 Objective.
3190.0–5 Definitions.
3190.0–7 Cross references.
3190.1 Proprietary data.
3190.2 Recordkeeping, funding and audit.
3190.2–1 Recordkeeping.
3190.2–2 Funding.
3190.2–3 Audit.
3190.3 Sharing of civil penalties.

Subpart 3191—Delegation of Authority

3191.1 Petition for delegation.
3191.1–1 Petition.
3191.1–2 Eligibility.
3191.1–3 Action upon petition.
3191.1–4 Public hearing on petition.
3191.2 Terms of delegation.
3191.3 Termination and reinstatement.
3191.3–1 Termination.
3191.3–2 Reinstatement.
3191.4 Standards of delegation.
3191.5 Delegation for Indian lands.
3191.5–1 Indian lands included in delegation.
3191.5–2 Indian lands withdrawn from delegation.

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 18, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399) and the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

Subpart 3190—Delegation of Authority, Cooperative Agreements and Contracts for Oil and Gas Inspections; General

§ 3190.0–1 Purpose.

The purpose of the part is to provide procedures for approval, implementation and administration of delegations of authority, cooperative agreements and contracts for inspection, enforcement and investigative activities related to oil and gas production operations on Federal and Indian lands under the provisions of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

§ 3190.0–3 Authority.

The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

§ 3190.0–4 Objective.

The objective of this part is to assure that delegations of authority, cooperative agreements and contracts as provided for under the Federal Oil and Gas Royalty Management Act are carried out in accordance with the provisions of the Act and this title.

§ 3190.0–5 Definitions.

As used in this part, the term:

(a) "Inspection" means the examination of oil and gas lease sites, records or motor vehicle documentation by an authorized representative of the Secretary of the Interior to determine if there is compliance with applicable regulations, Onshore Oil and Gas orders, approvals, Notices to Lessees and Operators, approvals, other written orders, the mineral leasing laws, and the Federal Oil and Gas Royalty Management Act.

(b) "Investigation" means any inquiry into any action by or on behalf of a lessee or operator of a Federal or Indian lease, or transporter of oil from such lease.

(c) "Contractor" means any individual, corporation, association, partnership, consortium or joint venture who has contracted to carry out activities under this part.

(d) "Enforcement" means action taken by an authorized representative of the Secretary in order to obtain compliance with applicable regulations, Onshore Oil and Gas Orders, Notices to Lessees and Operators, approvals, other written orders, the mineral leasing laws, and the Federal Oil and Gas Royalty Management Act.

(e) "Indian lands" means any lands or interests in lands of an Indian tribe or an Indian allottee held in trust by the United States or which is subject to Federal restriction against alienation, including mineral resources and mineral estates reserved to an Indian tribe or Indian allottee in the conveyance of a surface or nonmineral estate, except that such term does not include any lands subject to the provisions of

Published in 52 F.R. 27180, July 17, 1987 - Effective August 17, 1987

section 3 of the Act of June 28, 1906 (34 Stat. 539).

(f) "Proprietary data" means information obtained from a lessee that constitutes trade secrets, or commercial or financial information that is privileged or confidential, or other information that may be withheld under the Freedom of Information Act (5 U.S.C. 552(b)).

§ 3190.0-7 Cross references.

(a) 25 CFR 211.18; 212.24; 213.34.
(b) 30 CFR Part 229.
(c) 43 CFR Part 3160.

§ 3190.1 Proprietary data.

With regard to any data or information obtained by a State, Indian tribe or individual, whether under a delegation of authority, cooperative agreement or contract, the following applies:

(a) Proprietary data shall be made available to a State or Indian tribe pursuant to a cooperative agreement under the provisions of 30 U.S.C. 1732 if such State or Indian tribe:

(1) Consents in writing to restrict the dissemination of such information to such persons directly involved in an investigation under 30 U.S.C. 1732 who need the information to conduct the investigation;

(2) Agrees in writing to accept liability for wrongful disclosure;

(3) In the case of a State, the State demonstrates that such information is essential to the conduct of an investigation or to litigation under 30 U.S.C. 1734; and

(4) In the case of an Indian tribe, the tribe demonstrates that such information is essential to the conduct of an audit or investigation and waives sovereign immunity by express consent for wrongful disclosure.

(b)(1) Any person or State that obtains proprietary data pursuant to a delegation of authority, cooperative agreement or contract under this part is subject to the same provisions of law with respect to the disclosure of such information as would apply to any officer or employee of the United States.

(2) Disclosure of proprietary data obtained pursuant to a delegation of authority, cooperative agreement, or contract under this part may not be compelled under State law.

§ 3190.2 Recordkeeping, funding and audit.

§ 3190.2-1 Recordkeeping.

(a) Records and accounts relating to activities under delegations of authority, cooperative agreements or contracts shall be identified in the delegation, cooperative agreement or contract.

(b) All records and other materials relating to a delegation of authority, cooperative agreement or contract shall be maintained by the State, Indian Tribe or contractor for a period of 6 years from the date they are generated or such other period as may be specified in the delegation, cooperative agreement or contract.

§ 3190.2-2 Funding.

(a) States and Tribes shall provide adequate funding for administration and execution of activities carried out under a delegation or cooperative agreement.

(b) Reimbursement for allowable costs incurred by a State, Indian tribe or contractor as a result of activities carried out under a delegation of authority, cooperative agreement or contract shall be as negotiated, with the following limitations:

(1) Up to 100 percent for a delegation of authority; or

(2) Up to 50 percent for a cooperative agreement.

(c) Funding shall be subject to the availability of funds.

(d) States, Indian tribes or contractors shall maintain financial records relating to the funds received and expended under a delegation of authority, cooperative agreement or contract as specified in the delegation of authority, cooperative agreement or contract.

(e) Reimbursement shall be at least quarterly and only shall be made upon submission of an invoice or request for reimbursement to the authorized officer.

§ 3190.2-3 Audit.

In maintaining financial records relating to the funds received and expended under a delegation of authority, cooperative agreement, or contract, States, Indian tribes and contractors shall comply with generally accepted accounting principles and audit requirements established by the Department of the Interior and Bureau of Land Management.

§ 3190.3 Sharing of civil penalties.

Fifty percent of any civil penalty collected by the United States as a result of activities carried out by a State under a delegation of authority or a State or Indian tribe under a cooperative agreement shall be payable to that State or Indian tribe upon receipt by the United States. Such amount shall be deducted from compensation due to the State or Indian tribe by the United States under the delegation of authority or cooperative agreement.

Subpart 3191—Delegation of Authority

§ 3191.1 Petition for delegation.

§ 3191.1-1 Petition.

The Governor or other authorized official of any eligible State may request in writing that the Director delegate all or part of his/her authority and responsibility for inspection, enforcement and investigation on oil and gas leases on Federal lands within the State and on Indian lands within the State where the affected Indian tribe or Indian allottee has given written permission for such inspection, enforcement and investigation. Requests by a State for delegation of other activities may be granted by the Director with the approval of the Secretary.

§ 3191.1-2 Eligibility.

Any State with producing oil or gas leases on Federal or Indian lands may request a delegation of authority.

§ 3191.1-3 Action upon petition.

Upon request for a delegation of authority, the Director shall determine if:

(a) The State has proposed an acceptable plan for carrying out the delegated activities and will provide adequate resources to achieve the purposes of 30 U.S.C. 1735. This plan shall, at a minimum:

(1) Identify specific authorities and responsibilities for which the State is requesting a delegation of authority and whether it is applicable to Federal lands only or includes Indian lands;

(2) Provide evidence of written permission of the affected Indian tribe(s) or allottee(s) for such lands;

(3) Include specifics for carrying out the delegated activities;

(4) Indicate the inspector resources for carrying out the delegated activities and documentation of inspector qualifications;

(5) Describe the proposed record keeping for funding purposes;

(6) Detail the frequency and method of payment; and

(7) Include copies of any non-Federal forms that are to be used.

(b) The State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Department of the Interior in accordance with the provisions of 30 U.S.C. 1735.

(c) The delegation will be carried out in coordination with activities retained by the Bureau so that such delegation will not create an unreasonable burden on any lessee.

§ 3191.1–4 Public hearing on petition.

Prior to the granting of any delegation of authority, the notice of proposed delegation shall be published in the **Federal Register**. The **Federal Register** notice shall provide an opportunity for a public hearing in the affected State.

§ 3191.2 Terms of delegation.

(a) Delegations shall be continuing, contingent upon available funding, providing that there is an annual finding by the Director that the provisions of the delegation and the mineral leasing laws are still being carried out and that the requirements of § 3191.1–3 (a), (b) and (c) of this title are still in effect.

(b) Authority delegated to a State under this subpart shall not be redelegated.

(c) The State regulatory authority shall maintain sufficient qualified, personnel to comply with the terms and purpose of the delegation.

(d) Inspection identification cards shall be issued by the authorized officer to all certified State inspectors for the purpose of identifying the bearer as an authorized representative of the Secretary. Identification cards remain the property of the United States.

(e) The delegation shall provide for coordination with designated offices of the Bureau of Land Management, the Minerals Management Service, and, where appropriate, the Bureau of Indian Affairs, Forest Service, and other surface management agencies.

(f) The delegation shall provide for annual program review.

(g) The delegation shall provide for annual budget and program reporting in conjunction with the Federal Budget process.

(h) The Director reserves the right to make inspections on Federal and Indian leases inspected by a State under this subpart for the purpose of evaluating the manner in which the delegation is being carried out.

(i) The Director reserves the right to act independently to carry out his/her responsibilities under the law.

§ 3191.3 Termination and reinstatement.

§ 3191.3–1 Termination.

(a) The delegation may be terminated by mutual written consent at any time.

(b) The Director may revoke a delegation if it is determined that the State has failed to meet the minimum standards for complying with the delegated authority.

(c) Prior to any action to revoke a delegation, the Director shall notify the State in writing of the deficiencies in the program leading to such revocation.

(d) Upon notification of intent to revoke a delegation, the State shall have 30 days to respond with a plan to correct the cited deficiencies. If the Director determines that the plan of correction is acceptable, the Director shall then approve the plan and specify the timeframe within which the cited deficiencies shall be corrected.

(e) In the event the Director makes a determination to revoke a delegation of authority, the State shall be provided an opportunity for a hearing prior to final action.

§ 3191.3–2 Reinstatement.

Terminated delegations of authority may be reinstated as set out below:

(a) For a delegation terminated by mutual consent under § 3191.3–1(a) of this title, the State shall apply for reinstatement by filing a petition with the Director, who shall determine whether such reinstatement should be granted.

(b) For a delegation of authority revoked by the Director, the State shall file a petition requesting reinstatement. In applying for reinstatement, the State shall provide written evidence that it has remedied all defects for which the delegation was revoked and that it is fully capable of resuming the activities carried out under the delegation. Upon receipt of the petition, the following actions shall be taken:

(1) The authorized officer, after review of the petition, may recommend approval of the reinstatement but shall provide proof that the deficiencies have been corrected and that the State is fully capable of carrying out the delegation.

(2) The Director shall review the petition and the recommendation of the authorized officer and may approve the reinstatement of a delegation upon a determination that the findings of the authorized officer are acceptable.

§ 3191.4 Standards of delegation.

(a) The Director shall establish minimum standards to be used by a State in carrying out activities established in the delegation.

(b) The delegation shall identify functions, if any, that are to be carried out jointly.

(c) A delegation shall be made in accordance with the requirements of this section.

(d) Copies of delegations shall be on file in the Washington Office of the Bureau and shall be available for public inspection.

§ 3191.5 Delegation for Indian lands.

§ 3191.5–1 Indian lands included in delegation.

(a) No activity under a delegation made under this subpart may be carried out on Indian lands without the written permission of the affected Indian tribe or allottee.

(b) A State requesting a delegation involving Indian lands shall provide, as evidence of permission, a written agreement signed by an appropriate official(s) of the Indian tribe for tribal lands, or by the individual allottee(s) or their representative(s) for allotted lands. The agreement shall at a minimum specify the type and extent of activities to be carried out by the State under the agreement, and provisions for State access to carry out the specified activities.

(c) Delegations covering Indian lands shall be separate from delegations covering Federal lands.

§ 3191.5–2 Indian lands withdrawn from delegation.

(a) When an Indian tribe or allottee withdraws permission for a State to conduct inspection and related activities on its lands, the Indian tribe or allottee shall provide written notice of its withdrawal of permission to the State.

(b) Immediately upon receipt of a notice of withdrawal of permission, the State shall provide written notification of said notice to the authorized officer, who immediately shall take all necessary action to provide for inspection and enforcement activities on the affected Indian lands.

(c) No later than 120 days after receipt of a notice of withdrawal of permission draw from an Indian tribe or allottee, the delegation on the lands covered by the notice shall terminate.

(d) Upon termination of a delegation covering Indian lands, appropriate changes in funding shall be made by the authorized officer.

May 11, 1987.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 87–16235 Filed 7–16–87; 8:45 am]

#2599

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2599; AA-540-07-4111-02]

43 CFR Part 3190

Delegation of Authority, Cooperative Agreements, and Contracts for Oil and Gas Inspections by Non-Federal Employees

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking establishes administrative procedures for programs for the inspection of federally supervised oil and gas leases by other than Federal employees. These procedures are designed to implement certain provisions of the Federal Oil and Gas Royalty Management Act of 1982. While Subpart 3190 establishes a framework for all such programs, the specific procedures in Subpart 3191 apply only to delegations of authority to States under section 205 of the Act.

EFFECTIVE DATE: August 17, 1987.

ADDRESS: Any inquiries or suggestions should be sent to: Director (540), Bureau of Land Management, Room 303 Premier Building, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Susan Pepperney, (202) 653-2200.

SUPPLEMENTARY INFORMATION: A proposed rulemaking to establish a new Part 3190 in Group 3100, implementing the authority contained in the Federal Oil and Gas Royalty Management Act (30 U.S.C. 1701 *et seq.*) relating to programs for the inspection of federally supervised oil and gas leases by other than Federal employees, was published in the Federal Register on October 14, 1986 (51 FR 36565). Comments were invited for a period of 60 days ending December 15, 1986, during which period a total of 21 comments were received, with 9 from business entities, 3 from Indian Tribes, 2 from law firms representing tribes and 1 from a law firm representing a corporation, 2 from State government agencies, 2 from Federal Government agencies, 1 from a business association, and 1 from an individual. Each of the comments has been given careful consideration during the decisionmaking process on this final rulemaking.

Several comments expressed general support or general opposition to the proposed rulemaking. These do not require specific discussion in the SUPPLEMENTARY INFORMATION except to state that promulgation of these regulations is necessary for the orderly execution of the Federal Oil and Gas Royalty Management Act. Most of the comments contained discussion of specific sections of the proposed rulemaking and in many instances recommended changes, some of which have been adopted in this final rulemaking. This preamble will discuss only those sections that were the subject of specific comments or were changed.

Section 3190.0-1—Purpose

One comment stated that this and other sections in Subpart 3190 should be rewritten to apply only to States. The proposed rulemaking contained only Subpart 3190, which is a general section addressing delegation of authority, cooperative agreements, and contracts, and Subpart 3191, which covers delegations of authority. Although Subpart 3191 pertains only to delegations, which are applicable only to States, Subpart 3190 is a general introduction not only to Subpart 3191, but also to Subparts 3192 and 3193 on cooperative agreements and contracts, which will be published later. Since cooperative agreements and contracts may be arranged with Indian tribes and States, it would be inappropriate to limit the scope of Subpart 3190 to States. It was also deemed more efficient to have 1 general subpart rather than 3 to reduce duplication. The comment has not been adopted in the final rulemaking.

Another comment suggested that § 3190.0-1 could be interpreted to include as a purpose of Part 3190 provision of procedures for delegations of authority for inspection, enforcement and investigation activities related to surface management and drilling operations as well as verification of oil and gas production. The comment requested that delegations be restricted to the authority to verify production. Although delegations are limited by the terms of this section to "activities related to oil and gas operations in Federal and Indian lands under the provisions of the Federal Oil and Gas Royalty Management Act," which emphasizes oil and gas production and product accountability, this section has been amended in the final rulemaking to make it clear that activities to be carried out under delegations and other transfers are restricted to producing leases.

Section 3190.0-5—Definitions

Several comments addressed the Definitions section of the proposed rulemaking. One suggested that a definition of "enforcement" should be added, because enforcement is one of the functions subject to delegation. This suggestion has been adopted. Another suggested that a definition for "Indian lands" should be added as well, and that the term should include lands whose surface only is owned by Indian Tribes, with minerals reserved to the United States. The definition of Indian lands provided in FOGRMA has been added. Instances where the surface is Indian land with minerals reserved to the United States will be considered on a case-by-case basis.

One comment pointed out that the Osage Tribe of Indians, by virtue of the terms of the Act of June 28, 1906 (34 Stat. 539), are not subject to the proposed rulemaking, and urged that the final rulemaking should state this explicitly. This suggestion has been adopted in the final rulemaking.

One comment suggested that the regulations should include a narrowly drawn definition of "proprietary data". This suggestion has been adopted in the final rulemaking.

Section 3190.1—Proprietary Data

Two comments questioned the provision in § 3190.1(a)(4) that requires Indian Tribes to "waive sovereign immunity by express consent for wrongful disclosure" of proprietary data made available to them pursuant to a cooperative agreement. The comments expressed concern that this provision would be an unlawful infringement on Tribal self-government. The requirement for Tribes to waive sovereign immunity by "express consent for wrongful disclosure" is specified in the Act. In order to benefit from receiving proprietary data, a Tribe should be willing to be held responsible for its wrongful disclosure. A waiver of sovereign immunity limited to the consequences of a specified act or class of acts does not compromise the general sovereign immunity of a Tribe. The comments are not adopted in the final rulemaking.

One comment expressed concern about the possibility that proprietary data may be inadvertently disclosed when provided to non-Federal employees. This possibility is the reason that both the statute and this rulemaking provide that those receiving such data are required to accept liability for wrongful disclosure.

One comment suggested that proprietary data should not be made available unless the recipient demonstrates that the persons who receive it, as well as being directly involved in an investigation under 30 U.S.C. 1732, also "have a need to know." This suggestion has been adopted in the final rulemaking.

The same comment suggested that a new section should be inserted providing that disclosure of confidential data may not be compelled under State law. This comment has been adopted, and a new § 3190.1(b)(2) has been added in the final rulemaking.

Section 3190.2–3—Audits

One comment recommended that this section include a requirement that those conducting audits under delegations, contracts, or cooperative agreements, comply with generally accepted accounting principles, auditing standards, and industry ethical standards. Audits referred to in this section are those of funds paid to States, Tribes, and contractors, not audits of oil and gas lessees. The provision has been edited to make its application more clear, but there is no need to refer to energy industry ethical standards.

Section 3190.2–2—Funding

One comment opposed the provision in § 3190.2–2(b)(2) that the cost incurred by a party to a cooperative agreement may be reimbursable up to 50 percent, while, under § 3190.2–2(b)(1), the costs of a party to which a delegation of authority has been made may be reimbursable up to 100 percent. The comment argued that this would be unfair to tribes, which are eligible only to enter cooperative agreements and are not as well funded as States, which are eligible to be delegated authority and collect the majority of taxes from production on Indian land. This rule is consistent with the 50 percent funding provided for cooperative agreements by the Minerals Management Service (MMS) at 30 CFR 228.105. MMS pointed to the cooperative nature of this activity as support for 50 percent, rather than 100 percent, funding. 49 FR 37336, 37342 (September 21, 1984). More recently, the Secretary of the Interior affirmed the policy reflected in this regulation in his response to the recommendations of the Royalty Management Advisory Committee on funding guidelines. Since the Tribes receive the full financial benefit from their mineral resources, no change is made in the final rulemaking in response to these comments.

Section 3190.3—Sharing of Civil Penalties

Several comments addressed this section of the proposed rulemaking, which would provide that 50 percent of any civil penalties collected should be retained by the United States, with the remaining 50 percent going to the State or Indian Tribe, and that the amount paid to the State or Tribe would be deducted from the amounts appropriated for that entity to conduct inspections. The comments feared that this provision would provide little incentive for Tribes to pursue civil penalties, and argued that penalties collected by Tribal inspections should accrue entirely to Tribes conducting inspections on their own land. One comment urged explicitly that a distinction should be drawn between Federal lands and Indian lands, and that penalties from the latter should be distributed to the beneficial owners of the lands. Another comment feared that the provision for sharing civil penalties will lead to abuses. The distribution of civil penalties provided for in this rulemaking is required by statute. No change is made in the final rulemaking in response to these comments.

Section 3191.1—Petition for Delegation

Two comments urged that Indian Tribes should be eligible for delegations of authority. This suggestion cannot be adopted because section 205 of FOGRMA does not provide for delegation of authority of Tribes.

One comment suggested that this section should provide that delegations of authority are allowed for auditing leases, rather than for enforcing the law, to be consistent with 30 U.S.C. 1735. Another stated that section 205(a) unequivocally limits the Secretary's delegation authority to conducting inspections, audits, and investigations. It is the policy of the Department of the Interior to include enforcement as a delegable activity. It is not specifically prohibited in the Act. Enforcement is an integral part of the inspection process that is the subject of delegations. Requiring enforcement by separate Federal personnel would be wasteful and fragment the program. Further, it would be needlessly burdensome upon the industry to subject operators to inspection by one agency and enforcement by another. The comment is not adopted in the final rulemaking.

Section 3191.1–3—Action Upon Petition

One comment addressed this section, stating that paragraph (c) implies piecemeal regulation that will result in duplication and additional burdens on operators and the oil industry. Actually, this paragraph expressly provides for coordination between delegated and non-delegated functions to avoid unreasonable burdens on lessees. The section is adopted as proposed.

Section 3191.1–4—Public Hearing on Petition

One comment urged that the notice of proposed delegation published in the Federal Register contain all the information, terms, and provisions of the proposed delegation in order to allow public and industry scrutiny of the entire matter before such delegations are implemented. This comment is adopted in the final rulemaking, which has been amended to make it clear that the proposed delegations will be published in full in the Federal Register, with an opportunity for public comment.

Section 3191.2—Terms of Delegation

One comment stated that this section, particulary paragraphs (f) through (i), would cause inconsistent actions and confusion for States, operators, and the oil and gas industry, if abused. The comment conceded that the intent of the section appears meritorious. The Department of the Interior will monitor all delegations as part of its oversight program, insuring that States do not abuse their delegated authority.

Section 3191.3—Termination and Reinstatement

One comment stated that there is no statutory provision for a State to submit a correction plan for deficiencies in delegation programs, as provided for in § 3131.3–1(d), and no statutory provision for reinstatement of a terminated delegation, as provided for in § 3191.3–2. The comment stated that these provisions could result in delays and extensions that could burden lessees. The Department of the Interior has determined that there should be a mechanism for correction deficiencies in a State program before permanently revoking the delegation of authority. Therefore, a policy decision was made to allow States to correct deficiencies. The requirement in § 3191.3–2(b) that a State be fully capable of resuming the activities carried out under the delegation will reduce movement of the program back and forth between the Federal and State agencies.

Editorial changes have been made as necessary.

The principal authors of this final rulemaking are Susan Pepperney and Stephen Spector of the Energy and Minerals Staff, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a

major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rulemaking will not have a significant economic effect on the States involved because they will be reimbursed for costs incurred as required by the Federal Oil and Gas Royalty Management Act of 1982.

This final rulemaking will not have a major impact on Federal and Indian lessees. Much of the information required by State regulatory agencies from a lessee or operator is essentially a duplicate of that presently required by the United States. In addition, under the existing system, a lessee or operator is often required to comply with 2 sets of operating regulations and is subject to twice the regulatory presence. The reduction in duplication of effort by State and Federal Governments resulting from this final rulemaking should result in less burdensome conditions for a lessee or operator.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The information collection requirements contained in 43 CFR Part 3190 require fewer than 10 responses annually. Of the 29 States eligible to participate in the delegation of authority or cooperative agreement programs authorized by this part, only 2 States have expressed interest in a delegation of authority and only 1 State has expressed interest in a cooperative agreement. The Bureau of Land Management currently has non-funded cooperative agreements with 3 Indian Tribes and has received indications of interest from 3 additional Tribes. Therefore, it is anticipated that participants in any of the programs authorized by this part will be less than 10 annually.

List of Subjects in 43 CFR Part 3190

Administrative practice and procedure, Government contracts, Indian lands—mineral resources, Intergovernmental relations, Mineral royalties, Oil and gas production, Public lands—mineral resources, Reporting and recordkeeping requirements.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 19, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), and the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*), Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended by adding a new Part 3190 as set forth below:

May 11, 1987.

J. Steven Griles,

Assistant Secretary of the Interior.

PART 3190—DELEGATION OF AUTHORITY, COOPERATIVE AGREEMENTS AND CONTRACTS FOR OIL AND GAS INSPECTION

Subpart 3190—Delegation of Authority, Cooperative Agreements and Contracts for Oil and Gas Inspections; General

Sec.
3190.0–1 Purpose.
3190.0–3 Authority.
3190.0–4 Objective.
3190.0–5 Definitions.
3190.0–7 Cross references.
3190.1 Proprietary data.
3190.2 Recordkeeping, funding and audit.
3190.2–1 Recordkeeping.
3190.2–2 Funding.
3190.2–3 Audit.
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Subpart 3191—Delegation of Authority

3191.1 Petition for delegation.
3191.1–1 Petition.
3191.1–2 Eligibility.
3191.1–3 Action upon petition.
3191.1–4 Public hearing on petition.
3191.2 Terms of delegation.
3191.3 Termination and reinstatement.
3191.3–1 Termination.
3191.3–2 Reinstatement.
3191.4 Standards of delegation.
3191.5 Delegation for Indian lands.
3191.5–1 Indian lands included in delegation.
3191.5–2 Indian lands withdrawn from delegation.

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 18, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399) and the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

Subpart 3190—Delegation of Authority, Cooperative Agreements and Contracts for Oil and Gas Inspections; General

§ 3190.0–1 Purpose.

The purpose of the part is to provide procedures for approval, implementation and administration of delegations of authority, cooperative agreements and contracts for inspection, enforcement and investigative activities related to oil and gas production operations on Federal and Indian lands under the provisions of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

§ 3190.0–3 Authority.

The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

§ 3190.0–4 Objective.

The objective of this part is to assure that delegations of authority, cooperative agreements and contracts as provided for under the Federal Oil and Gas Royalty Management Act are carried out in accordance with the provisions of the Act and this title.

§ 3190.0–5 Definitions.

As used in this part, the term:

(a) "Inspection" means the examination of oil and gas lease sites, records or motor vehicle documentation by an authorized representative of the Secretary of the Interior to determine if there is compliance with applicable regulations, Onshore Oil and Gas orders, approvals, Notices to Lessees and Operators, approvals, other written orders, the mineral leasing laws, and the Federal Oil and Gas Royalty Management Act.

(b) "Investigation" means any inquiry into any action by or on behalf of a lessee or operator of a Federal or Indian lease, or transporter of oil from such lease.

(c) "Contractor" means any individual, corporation, association, partnership, consortium or joint venture who has contracted to carry out activities under this part.

(d) "Enforcement" means action taken by an authorized representative of the Secretary in order to obtain compliance with applicable regulations, Onshore Oil and Gas Orders, Notices to Lessees and Operators, approvals, other written orders, the mineral leasing laws, and the Federal Oil and Gas Royalty Management Act.

(e) "Indian lands" means any lands or interests in lands of an Indian tribe or an Indian allottee held in trust by the United States or which is subject to Federal restriction against alienation, including mineral resources and mineral estates reserved to an Indian tribe or Indian allottee in the conveyance of a surface or nonmineral estate, except that such term does not include any lands subject to the provisions of

section 3 of the Act of June 28, 1906 (34 Stat. 539).

(f) "Proprietary data" means information obtained from a lessee that constitutes trade secrets, or commercial or financial information that is privileged or confidential, or other information that may be withheld under the Freedom of Information Act (5 U.S.C. 552(b)).

§ 3190.0-7 Cross references.

(a) 25 CFR 211.18; 212.24; 213.34.

(b) 30 CFR Part 229.

(c) 43 CFR Part 3160.

§ 3190.1 Proprietary data.

With regard to any data or information obtained by a State, Indian tribe or individual, whether under a delegation of authority, cooperative agreement or contract, the following applies:

(a) Proprietary data shall be made available to a State or Indian tribe pursuant to a cooperative agreement under the provisions of 30 U.S.C. 1732 if such State or Indian tribe:

(1) Consents in writing to restrict the dissemination of such information to such persons directly involved in an investigation under 30 U.S.C. 1732 who need the information to conduct the investigation;

(2) Agrees in writing to accept liability for wrongful disclosure;

(3) In the case of a State, the State demonstrates that such information is essential to the conduct of an investigation or to litigation under 30 U.S.C. 1734; and

(4) In the case of an Indian tribe, the tribe demonstrates that such information is essential to the conduct of an audit or investigation and waives sovereign immunity by express consent for wrongful disclosure.

(b)(1) Any person or State that obtains proprietary data pursuant to a delegation of authority, cooperative agreement or contract under this part is subject to the same provisions of law with respect to the disclosure of such information as would apply to any officer or employee of the United States.

(2) Disclosure of proprietary data obtained pursuant to a delegation of authority, cooperative agreement, or contract under this part may not be compelled under State law.

§ 3190.2 Recordkeeping, funding and audit.

§ 3190.2-1 Recordkeeping.

(a) Records and accounts relating to activities under delegations of authority, cooperative agreements or contracts shall be identified in the delegation, cooperative agreement or contract.

(b) All records and other materials relating to a delegation of authority, cooperative agreement or contract shall be maintained by the State, Indian Tribe or contractor for a period of 6 years from the date they are generated or such other period as may be specified in the delegation, cooperative agreement or contract.

§ 3190.2-2 Funding.

(a) States and Tribes shall provide adequate funding for administration and execution of activities carried out under a delegation or cooperative agreement.

(b) Reimbursement for allowable costs incurred by a State, Indian tribe or contractor as a result of activities carried out under a delegation of authority, cooperative agreement or contract shall be as negotiated, with the following limitations:

(1) Up to 100 percent for a delegation of authority; or

(2) Up to 50 percent for a cooperative agreement.

(c) Funding shall be subject to the availability of funds.

(d) States, Indian tribes or contractors shall maintain financial records relating to the funds received and expended under a delegation of authority, cooperative agreement or contract as specified in the delegation of authority, cooperative agreement or contract.

(e) Reimbursement shall be at least quarterly and only shall be made upon submission of an invoice or request for reimbursement to the authorized officer.

§ 3190.2-3 Audit.

In maintaining financial records relating to the funds received and expended under a delegation of authority, cooperative agreement, or contract, States, Indian tribes and contractors shall comply with generally accepted accounting principles and audit requirements established by the Department of the Interior and Bureau of Land Management.

§ 3190.3 Sharing of civil penalties.

Fifty percent of any civil penalty collected by the United States as a result of activities carried out by a State under a delegation of authority or a State or Indian tribe under a cooperative agreement shall be payable to that State or Indian tribe upon receipt by the United States. Such amount shall be deducted from compensation due to the State or Indian tribe by the United States under the delegation of authority or cooperative agreement.

Subpart 3191—Delegation of Authority

§ 3191.1 Petition for delegation.

§ 3191.1-1 Petition.

The Governor or other authorized official of any eligible State may request in writing that the Director delegate all or part of his/her authority and responsibility for inspection, enforcement and investigation on oil and gas leases on Federal lands within the State and on Indian lands within the State where the affected Indian tribe or Indian allottee has given written permission for such inspection, enforcement and investigation. Requests by a State for delegation of other activities may be granted by the Director with the approval of the Secretary.

§ 3191.1-2 Eligibility.

Any State with producing oil or gas leases on Federal or Indian lands may request a delegation of authority.

§ 3191.1-3 Action upon petition.

Upon request for a delegation of authority, the Director shall determine if:

(a) The State has proposed an acceptable plan for carrying out the delegated activities and will provide adequate resources to achieve the purposes of 30 U.S.C. 1735. This plan shall, at a minimum:

(1) Identify specific authorities and responsibilities for which the State is requesting a delegation of authority and whether it is applicable to Federal lands only or includes Indian lands;

(2) Provide evidence of written permission of the affected Indian tribe(s) or allottee(s) for such lands;

(3) Include specifics for carrying out the delegated activities;

(4) Indicate the inspector resources for carrying out the delegated activities and documentation of inspector qualifications;

(5) Describe the proposed record keeping for funding purposes;

(6) Detail the frequency and method of payment; and

(7) Include copies of any non-Federal forms that are to be used.

(b) The State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Department of the Interior in accordance with the provisions of 30 U.S.C. 1735.

(c) The delegation will be carried out in coordination with activities retained by the Bureau so that such delegation will not create an unreasonable burden on any lessee.

§ 3191.1-4 Public hearing on petition.

Prior to the granting of any delegation of authority, the notice of proposed delegation shall be published in the Federal Register. The Federal Register notice shall provide an opportunity for a public hearing in the affected State.

§ 3191.2 Terms of delegation.

(a) Delegations shall be continuing, contingent upon available funding, providing that there is an annual finding by the Director that the provisions of the delegation and the mineral leasing laws are still being carried out and that the requirements of § 3191.1-3 (a), (b) and (c) of this title are still in effect.

(b) Authority delegated to a State under this subpart shall not be redelegated.

(c) The State regulatory authority shall maintain sufficient qualified, personnel to comply with the terms and purpose of the delegation.

(d) Inspection identification cards shall be issued by the authorized officer to all certified State inspectors for the purpose of identifying the bearer as an authorized representative of the Secretary. Identification cards remain the property of the United States.

(e) The delegation shall provide for coordination with designated offices of the Bureau of Land Management, the Minerals Management Service, and, where appropriate, the Bureau of Indian Affairs, Forest Service, and other surface management agencies.

(f) The delegation shall provide for annual program review.

(g) The delegation shall provide for annual budget and program reporting in conjunction with the Federal Budget process.

(h) The Director reserves the right to make inspections on Federal and Indian leases inspected by a State under this subpart for the purpose of evaluating the manner in which the delegation is being carried out.

(i) The Director reserves the right to act independently to carry out his/her responsibilities under the law.

§ 3191.3 Termination and reinstatement.

§ 3191.3-1 Termination.

(a) The delegation may be terminated by mutual written consent at any time.

(b) The Director may revoke a delegation if it is determined that the State has failed to meet the minimum standards for complying with the delegated authority.

(c) Prior to any action to revoke a delegation, the Director shall notify the State in writing of the deficiencies in the program leading to such revocation.

(d) Upon notification of intent to revoke a delegation, the State shall have 30 days to respond with a plan to correct the cited deficiencies. If the Director determines that the plan of correction is acceptable, the Director shall then approve the plan and specify the timeframe within which the cited deficiencies shall be corrected.

(e) In the event the Director makes a determination to revoke a delegation of authority, the State shall be provided an opportunity for a hearing prior to final action.

§ 3191.3-2 Reinstatement.

Terminated delegations of authority may be reinstated as set out below:

(a) For a delegation terminated by mutual consent under § 3191.3-1(a) of this title, the State shall apply for reinstatement by filing a petition with the Director, who shall determine whether such reinstatement should be granted.

(b) For a delegation of authority revoked by the Director, the State shall file a petition requesting reinstatement. In applying for reinstatement, the State shall provide written evidence that it has remedied all defects for which the delegation was revoked and that it is fully capable of resuming the activities carried out under the delegation. Upon receipt of the petition, the following actions shall be taken:

(1) The authorized officer, after review of the petition, may recommend approval of the reinstatement but shall provide proof that the deficiencies have been corrected and that the State is fully capable of carrying out the delegation.

(2) The Director shall review the petition and the recommendation of the authorized officer and may approve the reinstatement of a delegation upon a determination that the findings of the authorized officer are acceptable.

§ 3191.4 Standards of delegation.

(a) The Director shall establish minimum standards to be used by a State in carrying out activities established in the delegation.

(b) The delegation shall identify functions, if any, that are to be carried out jointly.

(c) A delegation shall be made in accordance with the requirements of this section.

(d) Copies of delegations shall be on file in the Washington Office of the Bureau and shall be available for public inspection.

§ 3191.5 Delegation for Indian lands.

§ 3191.5-1 Indian lands included in delegation.

(a) No activity under a delegation made under this subpart may be carried out on Indian lands without the written permission of the affected Indian tribe or allottee.

(b) A State requesting a delegation involving Indian lands shall provide, as evidence of permission, a written agreement signed by an appropriate official(s) of the Indian tribe for tribal lands, or by the individual allottee(s) or their representative(s) for allotted lands. The agreement shall at a minimum specify the type and extent of activities to be carried out by the State under the agreement, and provisions for State access to carry out the specified activities.

(c) Delegations covering Indian lands shall be separate from delegations covering Federal lands.

§ 3191.5-2 Indian lands withdrawn from delegation.

(a) When an Indian tribe or allottee withdraws permission for a State to conduct inspection and related activities on its lands, the Indian tribe or allottee shall provide written notice of its withdrawal of permission to the State.

(b) Immediately upon receipt of a notice of withdrawal of permission, the State shall provide written notification of said notice to the authorized officer, who immediately shall take all necessary action to provide for inspection and enforcement activities on the affected Indian lands.

(c) No later than 120 days after receipt of a notice of withdrawal of permission draw from an Indian tribe or allottee, the delegation on the lands covered by the notice shall terminate.

(d) Upon termination of a delegation covering Indian lands, appropriate changes in funding shall be made by the authorized officer.

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